

***United States Court of Appeals
for the Second Circuit***



APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ORIGINAL

74-1059

B
P/S

SUSAN L. ROSENSTIEL,

Plaintiff-Appellant,

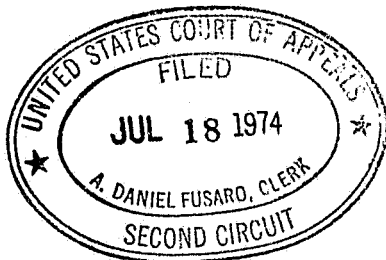
-against-

LEWIS S. ROSENSTIEL,

Defendant-Appellee.

ON APPEAL FROM A JUDGMENT OF THE
UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX



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PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

CIVIL DOCKET 67 CIV 1883
UNITED STATES DISTRICT COURT

JUDGE 67 CIV 1883

Jury demand date: 5-12-67 BY PLAINTIFF

JUDGE WARD

Form No. 106 Rev.

TITLE OF CASE

ATTORNEYS

JOAN L. ROSENSTIEL

VS

JOAN S. ROSENSTIEL

For plaintiff:

Phillips, Wiener, Benjamin, Krim & Fallon

1501 Broadway, N.Y. 10036

Scott & Sokman

212 Madison Ave. N.Y.

(Subs. as atty. for plaintiff 1-1-68)

Jarmon, H. L. & Co. - Scales

100 West 10th St. NYC 10011

(Subs. as atty. for plaintiff 1-1-68)

Otterbourg, Steindler, Houston & Rosen

230 Park Ave. NYC 10017 (Subst. 5-21-70)

SHORENSTEIN & SHORENSTEIN ESQS.

595 Madison Ave NYC 10022 (as of 10-20-7)

For defendant:

Saxe, Bacon & Bolan

598 Madison Ave., NYC 10022 (PL 2-6160)

Reynolds & Reynolds

512 Madison Ave. NYC 10017

Kurtz & Vassallo & Greenbaum Wolff & Ernst

598 Madison Avenue, NYC 10022 421 1870

STATISTICAL RECORD

COSTS

DATE

NAME OR RECEIPT NO.

REC.

DISB.

S. 5 mailed

X

Clerk

5/20/67 1/10/67

25

-

-

-

S. 6 mailed

Marshal

5/11/67 1/15/67

15

-

-

-

Costs of Action:

Docket fee

5/11/67 1/15/67

15

-

-

-

COPIES OF AGREEMENT

Witness fees

5/11/67 1/15/67

15

-

-

-

Action arose at:

Depositions

5/11/67 1/15/67

15

-

-

-

JUDGE WARD

JUDGE WARD

DATE	PROCEEDINGS	Date of Judgment
May 13-67	Filed complaint and issued summons	
May 15-67	Filed Order to Show Cause re: Restraining Order. Ret. 5/16/67.	
May 15-67	Filed Memorandum in support of pltf's application for preliminary injunction.	
May 17-67	Filed stip. & order adjourning motion filed 5-15-67 to 5-23-67, waiving 10 day limitation for Temporary Restraining Order & extending time thereof, and that deft. serve opposing papers not later than 12 noon 5-19-67.-McGohey, J.	
May 19-67	Filed Affidavit in opposition to motion.	
May 19-67	Filed Defendant's Memorandum.	
May 22-67	Filed stip. & order adjourning motion filed 5-15-67 to 5-31-67, etc.-Tyler, J.	
May 29-67	Filed stip. & order adjourning motion filed 5-15-67 to 6-6-67, etc.-Tyler, J.	
June 5-67	Filed Notice to take Deposition.	
June 6-67	Filed (in court) Plaintiff's Supplemental Notice of Motion.	
June 6-67	Filed (in court) Memorandum in support of plaintiff's application for leave to take depositions.	
June 6-67	Filed (in court) Plaintiff's Reply Memorandum in support of her motion.	
June 6-67	Filed (in court) Plaintiff's Reply Affidavit.	
June 8-67	Filed Order to Show Cause re: Stay Depositions. Ret. 6/13/67.	
June 9-67	Filed stip. & order extending time of deft. to answer to 6-19-67.-Tenney, J.	
June 13-67	Filed summons & return, served deft. by L.S. Rosenstiel 5-24-67	
June 16-67	Filed memo endorsed on supplemental motion filed 6-5-67. Motion granted. So ordered.-Tenney, J.--mailed notice	
June 16-67	Filed memo endorsed on motion filed 6-8-67. Motion denied. So ordered.-Tenney, J.	
June 19-67	Filed deft's ANSWER	SB&B
June 20-67	Filed pltf's notice of deposition of deft	
July 31-67	Filed Deposition of John W. Prunty. and Plaintiff's Exhibit A. (mailed notice)	
July 31-67	Filed Deposition of E.B. Leatherman	"
July 31-67	Filed Deposition of Fern E. Golding.	"
July 31-67	Filed Deposition of Richard H. Olsen.	"
July 31-67	Filed Deposition of Patrick E. Cunningham.	"
July 31-67	Filed stipulation that depositions of Mr. Roy Cohn and Mr. John Vassallo will be taken upon the return of counsel to N.Y.C. on a mutually agreed date.	
Aug 29-67	Filed transcript of deposition of Roy Cohen taken 7-20-67 m/n	
June 13-67	Filed Rebuttal Affidavit (filed in court)	
June 13-67	Filed Plaintiff's further Reply Affidavit (filed in court)	
June 13-67	Filed Sur Reply Memorandum.	
Dec. 11-67	Filed Defendant's Memorandum in summary of evidence taken on deposition.	
Dec. 11-67	Filed Defendant's Rebuttal Memorandum.	
Dec. 11-67	Filed Plaintiff's Final Reply Memorandum.	
Dec. 11-67	Filed Plaintiff's Final Memorandum summarizing evidence.	
Dec. 11-67	Filed OPINION #34255. Tenney, J. accordingly, plaintiff's motion to hold defendant in contempt is denied. Findings of Fact and Conclusions of Law as required by Rule 52(a) of the FRCP, are contained herein. It is so ordered. (mailed notice)	
Jan. 10-68	Filed plaintiff's notice of appeal, mailed copy to Saxe, Bacon & Bolan, 598 Madison Ave., N. Y.	
Jan. 12-68	Filed plaintiff's notice of appeal, mailed copy to Saxe, Bacon & Bolan, 598 Madison Ave. N. Y.	
Jan. 1-68	Filed stip. & order substituting Scoll & Solomon as attys. for plaintiff--Tyler, J.	
May. 2-68	Filed plaintiff's affidavit and notice of motion to file amended complaint. ret. 5-21-68.	

Continued on Page 2

JUDGE WARD

JUDGE McLEAN

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Judgment
May. 3-68	Filed plaintiff's memorandum of points.	
May. 17-68	Filed affidavit of Roy M. Cohn in opposition to plaintiff's motion, pursuant to Rule 15(a).	
May. 20-68	Filed affidavit of Lewis S. Rosenstiel in opposition to plaintiff's motion for leave to interpose an amended complaint.	
Jun. 17-68	Filed memo endorsed on motion filed 5-2-68--The motion is therefore disposed of as follows: Leave to file an amended complaint in the form annexed to the moving papers is denied. Leave is granted, however, to plaintiff to serve and file, within twenty days from the date of this order, an amended and supplemental complaint which does not contain the allegations referred to in paragraph numbered 1 and 2 of this memorandum.--McLean, J. mn	
Sep. 27-68	Filed amended complaint.	
Oct. 16-68	Filed stip & order extending deft's time to answer amended complaint to 11-5-68. ---So ordered--Ryan, J.	
Nov. 8-68	Filed stip. & order extending time of defendant to answer amended complaint to 11-27-68--MacMahon, J.	
Jan. 20-69	Filed deft's affidavit and notice of motion to dismiss, etc. ret. 2-18-69.	
Jan. 20-69	Filed deft's brief in support of motion to dismiss.	
Feb. 17-69	Filed stip that motion now ret. 2-18-69 be adjourned to 2-25-69.	
Feb. 17-69	Filed notice and consent to substitute attys. for plttf. So Ordered--Clerk.	
Feb. 24-69	Filed stip that motion now ret. 2-25-69 be adjourned to 3-25-69.	
Feb. 26-69	Filed consent and order of substitution of deft's attys. So Ordered--Clerk.	
Mar. 19-69	Filed affidavit of Richard W. Wallach in opposition to defts' motion to dismiss amended complaint.	
Mar. 19-69	Filed plttf's memorandum of law in opposition to deft's motion.	
Mar. 24-69	Filed plttf's statement under rule 9(g).	
Mar. 26-69	Filed in court--affidavit of John A. Vassallo in support of deft's motion to dismiss amended complaint, etc.	
Mar. 26-69	Filed in court-reply memorandum of law in support of deft's motion to dismiss and for summary judgment.	
Jun. 26-69	Filed plttf's rebuttal memorandum of law.	
Jun. 26-69	Filed Memorandum Opinion #35970--Deft. moves to dismiss the action or in the alternative for summary judgment. The motion to dismiss or for summary judgment is denied. It is so ordered--Bonsal, J. m/n 7p	
Jul. 30-69	Filed deft's notice of motion to amend decision, ret. 8-12-69.	
Jul. 30-69	Filed memorandum in support of motion to amend decision.	
Aug. 11-69	Filed stip that motion now ret. 8-12-69 be adjourned to 9-9-69.	
Sep. 16-69	Filed memorandum in opposition to deft's motion to amend order.	
Sep. 24-69	Filed memo endorsed on motion filed 7-30-69--Deft's motion for leave to appeal (28 USC 1292(b)) is denied. It is so ordered--Bonsal, J. m/n	
Nov. 5-69	Filed order that plttf. shall file note of issue within 150 days or action to be dismissed. Sugarman, Ch. J. m/n	
1-3-70	On call for review - G. R. 23 before SUGARMAN, Ch. J. 150 D/D	
Jan. 20-70	Filed plttf's affdvt & notice of motion to extend time to file a note of issue from 1-4-70 to 6-3-70	
Jan. 20-70	Filed memo endorsed on motion filed this date--Plttf's time to comply with order dated 11-5-69 is extended through 6-3-70--So ordered--Sugarman, Ch. J. note of issue	
Jan. 20-70	Filed deft's opposing affdvt to plttf's motion for an extension of time to file a	
**9-22-69	Filed in Court: Reply Memo in support of Deft's motion.	
May 21-70	Filed stip & order of substitution of atty for deft. -Clark	
June 3-70	Filed plttf's NOTE OF ISSUE & statement of readiness	
June 29-70	Filed order pursuant to Cal. Rules 6 & 13--Sugarman, Ch. J.	
Oct 21-71	Filed affdvt of Susan L. Rosenstiel in support of motion for stay etc.	

continued

DATE	PROCEEDINGS	Date Order Judgment No.
July 8-70	Filed Deft's designation of trial counsel.	
Jul 15-70	Filed plttf's designation of trial counsel	
Oct 20 71	Filed Affidvt, consents & Order that Shorestein & Shorestein of 595 Madison Ave NYC be substituted in place of Otterbourg, Steindler, Houston & Rosen as attys for plttf Susan Rosenstiel. So Ordered- Curfein J.	
NOV 3 71	Filed Affidvt & notice of motion by plttf for an order staying all pre-trial proceedings & retaining this action in its present calendar position. MEMO ENDORSED on motion- "#### The motion is in all respects denied. So Ordered. McLohey J."	
Nov 3 71	Filed Opposing affidvt by John A Vassallo, counsel to deft, in opposition to plttf's motion for an order which would authorize the commencement of discovery proceedings at this time, notwithstanding the filing of a note of issue.	
Mar22-73	Filed supplemental Affidavit of John A. Vassallo (deft atty) in support of defts motion purs to Rule 15 (a) for an order granting deft leave to file an amended answer in the form annexed to defts moving papers on this motion.	
Mar22-73	Filed memorandum of lw in support of defts motion for leave to file an amended answer.	
Mar22-73	Filed plttf's Affidavit in opposition to defts motion to amend its answer on the following grounds: (a) laches, b. prejudicial, and frivolous and specious.	
Mar22-73	Filed memo endorsed on motion filed Mar22-73. Motion granted in accordance with memo decision filed herewith, Ward, J. M/N	
Mar22-73	Filed memo and order granting the deft leave to serve and file an amended answer, Rule 15 (a) provides that leave to amend shall be freely given when justice so requires. No undue prejudice to plttf having been demonstrated, the motion to amend deft answer is granted, Ward, J. M/N	
Mar 30.73	Filed Amended Answer to Amended Complaint.	KV&G
Apr 5.73	Filed Pre Trial Order by Plttf. Ward J.	
May 15.73	Filed Plttfs. Supplemental Pre Trial Statement.	
May 14.73	Filed Stip. Plttfs. Pre Trial Statement, Notice to produce, of this action	
May 15-73	<i>Filed & served</i>	
May 16-73	<i>"</i>	
May 17-73	<i>"</i>	
May 21-73	<i>"</i>	
May 22-73	<i>"</i>	
May 23-73	<i>Continued See Also Motion to serve & file 1/17/73 -</i>	
Jun 26.73	Filed Transcript of proceedings dated 5/14,15,16/73.	
Jun 26.73	Filed Transcript of proceedings dated 5/17,21,22,23/73	
Dec.17.73	Filed Opinion #40131. The Court in the exercise of its discretion, denies plttf. counsel fees. Etc. Settle Judgment on Notice Ward J. (mailed notice)	
Dec.27.73	Filed report of US Magistrate Raby.	
Dec.27.73	Filed Amended Complaint.	
Dec.27.73	Filed Plttfs pretrial memorandum of points & authorities.	
Dec.27.73	Filed Plttfs. memorandum of law.	
Dec.27.73	Filed Plttfs. proposed findings of fact & conclusions of law.	
Dec.27.73	Filed Defts proposed findings of fact & conclusions of law.	
Dec.27.73	Filed Plttfs pre trial memorandum.	
Dec.27.73	Filed Deft's Pre Trial Memorandum	
Dec.27.73	Filed Defts supplemental pretrial memorandum,	
Dec.27.73	Filed Defts. second supplemental pretrial memorandum	
Dec.27.73	Filed Defts. 3rd supplemental Pre Trial Memorandum.	
Dec.27.73	Filed Defts Trial Memorandum.	
Dec.27.73	Filed Defts. memorandum of law on admissibility of defts. oral & written declaration of domicile.	

Continued

AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SUSAN L. ROSENSTIEL,

Plaintiff,

-against-

LEWIS S. ROSENSTIEL,

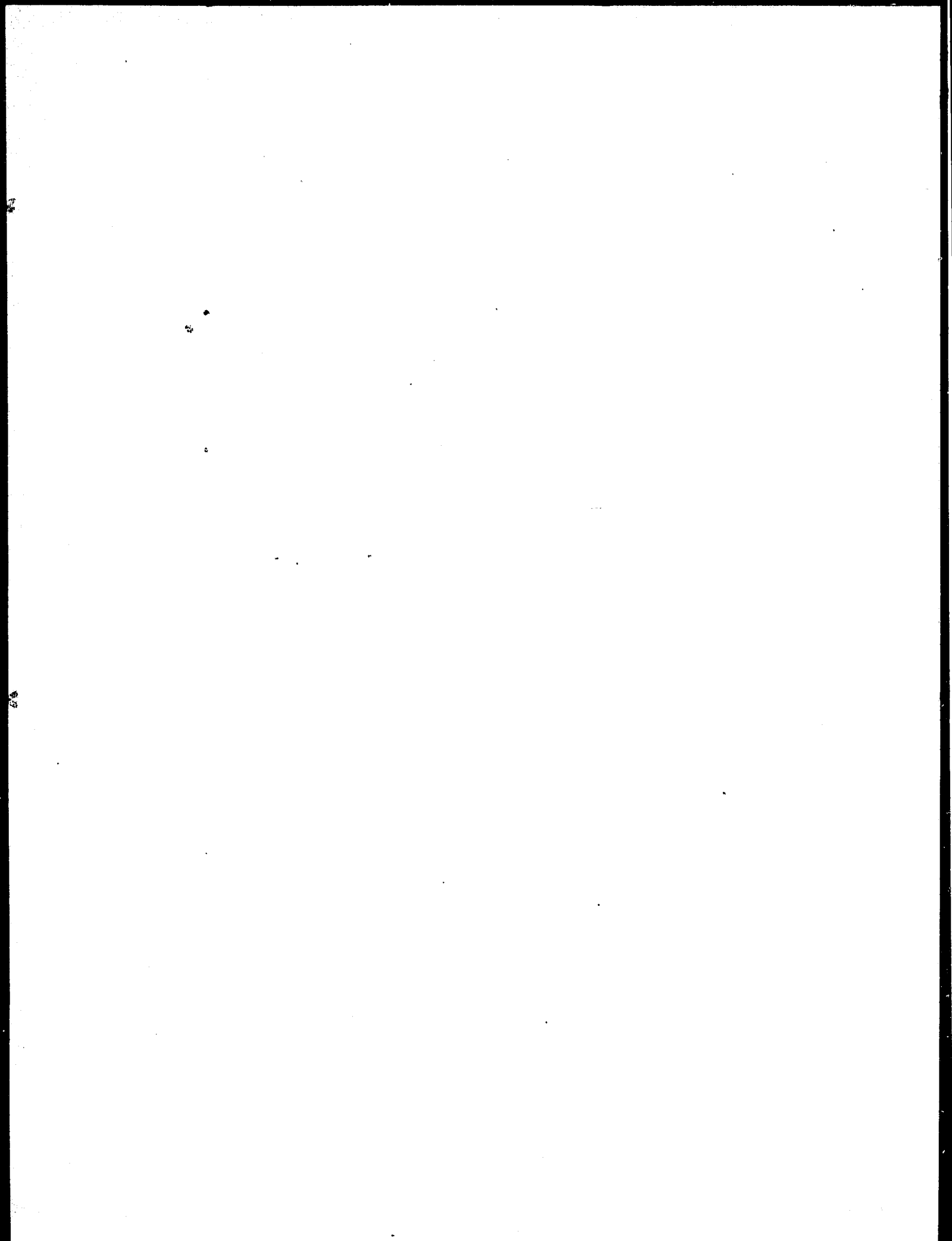
Defendant.

Plaintiff SUSAN L. ROSENSTIEL, by her attorneys, SCOLL & COLEMAN, complaining of the defendant LEWIS S. ROSENSTIEL, alleges:

FIRST CLAIM

1. This is an action for a declaratory judgment pursuant to the Federal Declaratory Judgment Act 28 U.S.C., Sections 2201, 2202, for the purpose of determining a question of actual controversy between the parties, as hereinafter more fully appears, and for other relief.

2. Plaintiff is, and at all times hereinafter mentioned, has been, a citizen and resident of the State of New York, and presently resides at the Regency Hotel, Park Avenue and 61 Street, Borough of Manhattan, City and State of New York.



AMENDED COMPLAINT

3. Defendant has, in prior and in presently pending judicial proceedings in the States of Connecticut, Florida and in the State of New York, alleged that he has been, and presently is, a citizen and resident of a State other than the State of New York.

4. The matter in controversy, exclusive of interest and costs, exceeds the sum of Ten Thousand (\$10,000.00) Dollars.

5. Plaintiff and defendant were duly married in the City and State of New York, on November 30, 1956. At all material times herein, the marital domicile of the parties was at 5 East 80th Street, Borough of Manhattan, City of New York.

6. On the 29th day of November, 1956, plaintiff and defendant executed in the City and State of New York, an ante-nuptial agreement settling their property rights, whereunder, in consideration of plaintiff waiving and releasing her rights to share in defendant's estate, defendant agreed to bequeath to her in trust, by his Last Will and Testament, 25,000 shares of the common stock of Schenley Industries, Inc. (hereinafter referred to as "Schenley"). A copy of said ante-nuptial agreement is annexed hereto as

AMENDED COMPLAINT

Exhibit "A". Thereafter, during the course of the marriage, the aforesaid ante-nuptial agreement was twice amended by the parties, once on September 18, 1957, and again on June 15, 1959, the first of which amendments was likewise executed in the City and State of New York. A copy of said amendments are hereto attached as Exhibits "B" and "C".

7. Said ante-nuptial agreement, as amended, also provided that the devise in trust to plaintiff was to be 25,000 shares of Schenley, plus any stock splits or stock dividends declared thereon, or any other shares or securities or other property received by defendant upon the sale or exchange of such shares, but in any event a minimum of \$450,000.00.

8. The said sum of \$450,000.00 was the then current approximate value of 25,000 shares of Schenley. By the aforementioned second amendment to the ante-nuptial agreement, dated June 15, 1959, (Exhibit "C"), defendant agreed to bequeath to the plaintiff outright, instead of in trust, the aforesaid shares of Schenley or other equity aforementioned.

9. As a result of the declaration of a series of stock dividends and stock splits declared

AMENDED COMPLAINT

on Schenley shares, the original 25,000 shares of Schenley stock aforementioned are now represented by approximately 47,000 shares of Schenley stock.

10. During the months of March and April, 1968, defendant entered into an agreement with one Meschulam Riklis to sell all the shares of Schenley stock owned directly by the defendant at an agreed purchase price of Eighty (\$80.00) Dollars per share plus, upon information and belief, certain stock options in other corporations.

The defendant has and/or will receive in excess of 3 million dollars in cash or other property in exchange for said 25,000 shares of Schenley stock which defendant contracted and agreed, for adequate consideration, to devise to his wife.

11. The aforementioned ante-nuptial agreement and amendments also provide that plaintiff's rights to receive any benefits thereunder was subject to defeasance in the event she predeceased the defendant or in the event that they were ". . . divorced or separated by decree of a court of competent jurisdiction, or separated by written agreement. . ." prior to the death of the defendant.

AMENDED COMPLAINT

The aforementioned ante-nuptial agreement, as well as the amendments thereto, among other provisions, expressly provide that:

"The terms, validity and interpretation of this agreement and all amendments, addendums, or modifications thereof, are to be interpreted and governed according to the laws of the State of New York."

12. On or about April 26, 1962, defendant herein instituted an action for annulment of their marriage against plaintiff in the Supreme Court of the State of New York, County of New York on the ground that the plaintiff was not his lawful wife, but the wife of another.

13. It was ultimately held in said annulment action that the plaintiff herein was the defendant's lawful wife (Rosenstiel v. Rosenstiel, 16 N.Y. 2d 64), certiorari denied.

14. The plaintiff cross moved in said action for support and for counsel fees. The defendant herein opposed the granting of support on the ground that the plaintiff herein had been guilty of "cruel and inhuman treatment" and of "abandonment" which "misconduct would itself constitute grounds for separation or divorce"

AMENDED COMPLAINT

(D.R.L. #236, McKinneys, N.Y.). A trial of these issues was had before Mr. Justice Helman on September 13, 14, 19, 20, 21 and 22, 1966, and October 11, 13, 14, 17, 18, 19 and 20, 1966. After hearing full and lengthy testimony on behalf of both sides, Justice Helman held in his decision dated November 30, 1966:

"Nor can I find support for plaintiff's charge of cruelty."

Justice Helman stated that neither the defendant's charges of cruelty or abandonment were sustained by the evidence. This decision was upheld on appeal to the Appellate Division and Court of Appeals and substantial alimony was awarded to the plaintiff.

15. The defendant, on or about March 24, 1967, claiming to be domiciled in Miami Beach, Dade County, Florida, brought an action for divorce against the plaintiff on the ground of extreme cruelty including habitual indulgence in violent and ungovernable temper, the same grounds the defendant herein sought to establish to defeat his wife's claim for support brought in the New York Courts. The plaintiff herein (defendant in Florida proceedings) was not served personally but by publication and was not a resident

AMENDED COMPLAINT

or domiciliary of Florida. She did not appear in the Florida proceedings.

16. The defendant herein obtained a divorce in the Dade County Court against the plaintiff on the grounds of cruelty and habitually indulging in violent and ungovernable behavior. These issues brought before the Florida Court had already been determined in an adversary proceeding before Mr. Justice Helman, Supreme Court, U. S. County, in which the issues and parties were the same, in New York, wherein they were decided in favor of the plaintiff herein. The Dade County, Florida, failed to apply res adjudicata and give full faith and credit to the prior New York determination in regard these identical issues, and thus violated the mandates of the United States Constitution.

17. By virtue of the Florida Court's failure to give full faith and credit to the New York findings involving the same parties and same issues presented therein, and the granting of a divorce decree against plaintiff herein, ex parte, she may be deprived of her rights as the wife of the defendant herein, and thus the said Florida decree should be

AMENDED COMPLAINT

declared null and void and without any effect on the plaintiff's marital rights.

SECOND CLAIM

18. Plaintiff repeats and realleges each and every allegation contained in paragraphs marked "1" through "17" with the same force and effect as if more fully set forth herein.

19. By reason of the failure of the Florida Court to give full faith and credit to the prior New York decree, the plaintiff's legal position in regard to the aforementioned ante-nuptial agreement are in doubt and should be resolved by a declaration that the Florida divorce decree obtained ex parte by the defendant from the Circuit Court of Dade County, Florida, is not a divorce of a Court of competent jurisdiction, such as would defeat the plaintiff's rights under the aforementioned ante-nuptial agreement pursuant to the terms thereof.

THIRD CLAIM

20. Plaintiff repeats and realleges each and every allegation contained in paragraphs marked "1" through "19" with the same force and effect as if more fully set forth herein.

AMENDED COMPLAINT

21. Beginning on or about October 1, 1961, the defendant embarked upon a course of action and conduct, whereby he willfully, maliciously and fraudulently has sought to deprive the plaintiff of her rights under the aforementioned ante-nuptial agreement, and nullify the said agreement as appears specifically, but not exclusively, from the following:

During the fall of 1961 the defendant demanded a divorce from the plaintiff, and when she refused, the defendant threatened that he would use his great wealth, power and political influence to get rid of her, and terminate their marriage in such a manner as to leave the plaintiff penniless.

22. On or about October 1, 1961, defendant retained a New York attorney for the sole purpose of terminating or dissolving his marital relationship with plaintiff, which termination or dissolution would have resulted in the forfeiture of all of plaintiff's rights under the aforementioned agreements between the parties. Upon information and belief, in connection with the retainer of this attorney, defendant authorized and instructed him to employ any other attorneys, accountants, private detectives, investigators, public

AMENDED COMPLAINT

relations experts, and any other individuals who could in any way aid or might be useful to secure the termination and dissolution of his marital and contractual relationships with plaintiff, which defendant has resolved to accomplish..

23. On or about October 18, 1961, defendant abandoned the plaintiff by leaving the marital domicile at 5 East 80th Street, New York City, and failing to provide support for her for a period of more than five (5) years, until directed to do so by judgment of the Supreme Court, New York County, on December 12, 1966.

24. On or about November 9, 1961, in furtherance of his threat as hereinabove alleged in paragraph 21 (a) and in furtherance of his continuing plans and scheme to defraud plaintiff, defendant, falsely and fraudulently claiming to be a domiciliary of Connecticut in which State he had and still owns a country summer home, instituted an action against plaintiff herein, in the Superior Court of the State of Connecticut, County of Fairfield, in Bridgeport, for (a) an annulment on the ground that defendant was allegedly fraudulently induced to marry plaintiff, or

AMENDED COMPLAINT

(b) for a divorce on the ground of plaintiff's alleged cruel and inhuman treatment. On January 3rd, 1962, defendant herein amended his complaint in Connecticut to include an additional count for an "annulment" on the ground that plaintiff's prior Mexican divorce decree was void, in that the Mexican Court was without jurisdiction. Copies of said Connecticut complaint and amendment thereto, are annexed hereto as Exhibits "D" and "E". When plaintiff appeared specially in this proceeding to challenge the jurisdiction of the Connecticut Court, on the ground that the defendant was not domiciled in Connecticut (the plaintiff being domiciled in New York), and obtained an order to examine the defendant with respect to domicile, the defendant discontinued this Connecticut proceeding on or about April 26, 1962.

25. That defendant spent hundreds of thousands of dollars on a fraudulent scheme seeking to vacate the prior divorce obtained by plaintiff's first husband against her on October 2, 1954, granted by the First Civil Court of Bravos, Chihuahua, Mexico, so that he could contend that plaintiff had no capacity to contract a valid marriage with the defendant on

AMENDED COMPLAINT

November 30, 1956. The defendant and his agents and attorneys caused a false and fraudulent petition to be filed in the name of a fictional creditor of plaintiff's first husband, SAMUEL GOLDSMITH, in said Mexican court, to bring about the nullification of plaintiff's prior divorce. The defendant employed one Jose Siguerrios, the attorney general of Chihuahua and other government officials to bring about the said ex parte nullification of plaintiff's prior divorce decree. The plaintiff was required to bring "Amparo" proceedings in the Federal Courts of Mexico to vacate said nullification. The defendant strenuously opposed the said Amparo proceeding, which finally resulted in the reinstatement of the original decree of divorce. A judgment of the Supreme Court of New York County, State of New York, of November 30, 1966, characterized the attempt to nullify plaintiff's prior decree of divorce as follows:

"What started as an investigation of a suspicious nullification decree in Mexico invalidating defendant's original divorce from her first husband resulted in extensive litigation in that country. Through the maze of forged documents, a fraud was uncovered which involved the activities in Mexican proceedings of a fictitious 'Samuel Goldsmith'

AMENDED COMPLAINT

as the proponent of a nullification of defendant's original divorce from her first husband in 1954. The vacatur of this ex parte nullification was unsuccessfully urged by defendant in the Mexican Federal Court, and it was only when the matter reached the highest court of Mexico that, in the words of the Mexican Foreign Ministry, 'events which could amount to the crimes of falsification, fraud, threats, etc.' were exposed and the nullification decree vacated."

26. The defendant then on or about April 26, 1962, instituted the proceeding in New York Supreme Court for an annulment (see paragraphs 12, 13, 14). As noted above, the Court dismissed the defendant's action for an annulment.

27. In his defense to plaintiff's claim for alimony and support in the Supreme Court of New York County, the defendant falsely and fraudulently claimed that plaintiff was guilty of cruel and inhuman treatment and abandonment, conduct which was allegedly sufficient to sustain a divorce or separation against the plaintiff. The Court, after hearing witnesses for the defendant, expressly rejected the defendant's contentions and ordered alimony paid in the sum of \$58,650 annually. The Appellate Division not only affirmed the judgment specifically finding that

AMENDED COMPLAINT

plaintiff was not guilty of conduct constituting grounds for separation or divorce, but also increased plaintiff's alimony to \$96,000 per annum. The said judgment was unanimously affirmed by the Court of Appeals. A similar finding exonerating plaintiff of any wrongdoing against the defendant was made by the Appellate Term of the Supreme Court in other litigation involving the plaintiff and defendant, with respect to the defendant's liability for necessities brought by the plaintiff after defendant had abandoned her and prior to the alimony award.

28. On or about March 24, 1967, while defendant's appeal to the Appellate Division from the order directing the payment of alimony was pending, defendant, as part of the comprehensive plan to defraud plaintiff as set forth herein, and claiming a domicile in Miami Beach, Dade County, Florida, instituted an action against the plaintiff for a divorce upon the identical grounds of "cruelty" (see paragraphs 4, 5, 6 of Exhibit "G") which was urged by the defendant and fully tried in the Supreme Court, New York County, as a defense to plaintiff's prayer for support from the defendant, and determined

AMENDED COMPLAINT

in favor of the plaintiff and against the defendant herein. Defendant's Summons and Complaint issued out of the Circuit Court of the 11th Judicial Circuit of Florida, on March 24, 1967, copies of which are annexed hereto as Exhibits "F" and "G", were not served upon plaintiff personally in Florida, but by publication. Plaintiff, mindful of the necessity to protect whatever marital rights she had under the decision of the New York Court rendered by Mr. Justice Helman, referred to above, did not appear in the Florida divorce proceeding.

29. Upon information and belief, defendant perpetrated a fraud upon the Circuit Court of Dade County, Florida, as well as upon the plaintiff, in failing to disclose to the Circuit Court of Dade County, that the ground asserted for his request for a divorce, i.e. "extreme cruelty", including "habitually indulging in a violent and ungovernable temper", was fully tried in defendant's own action for an annulment in New York and determined in favor of the plaintiff, and that the aforementioned Judgment of the Supreme Court of the State of New York, which, under the U. S. Constitution, must be accorded full faith and credit,

AMENDED COMPLAINT

was, under the time-honored legal principle of res judicata, binding upon the parties and all other Courts, and was a complete bar to defendant's relitigating the same charges in the Courts of Florida or in any other Court.

30. Though defendant herein and his counsel were fully aware of the res judicata principle and its precluding effect upon parties who seek to relitigate the same issues in a differed jurisdiction, they nevertheless perpetrated a fraud upon the Florida Court in the hope that the risk which plaintiff herein must take in "appearing" in the Florida action for a divorce in order to invoke the full faith and credit provision of the U. S. Constitution with respect to the Judgment of the New York Supreme Court (and attempting with no assurance of success, to persuade the Florida Court to apply the res judicata effect of New York Judgment) would deter plaintiff from "appearing" and defendant would thereby escape the res judicata effect of the New York Supreme Court Judgment (Exhibit "H"). The "risk" to plaintiff in "appearing" in the defendant's Florida action involved plaintiff's placing at the mercy of the Florida Court

AMENDED COMPLAINT

the support awards granted her under the New York Judgment, which Judgment would be superseded by a support award, if any, which the Florida Court might fix, upon Florida standards, at defendant's request.

On the other hand, under equally settled law, in order to protect her New York Supreme Court support award from being superseded by a grossly reduced amount or even cancelled, plaintiff was compelled to default and leave unchallenged in Florida the groundless charge of her alleged "cruelty" previously determined in her favor and against defendant herein, in the Supreme Court of New York; and was thereby disabled from exercising her constitutional rights to invoke in the Florida Courts the full faith and credit rule - which, if applied by the Florida Court - would have given full effect to the New York Supreme Court Judgment (Exhibit "H") absolving plaintiff of the charge of "cruelty" and deny defendant's claim for a divorce. Estin v. Estin (334 U.S. 541).

The fact that the plaintiff's conduct did not give rise to a cause of action for separation or divorce has now been determined by the New York Appellate Term and Appellate Division for the First

AMENDED COMPLAINT

Judicial Department as well as the Court of Appeals.

31. The defendant's efforts to create a domicile in Florida were part and parcel of his scheme and plan to deny plaintiff her marital and contractual rights. The defendant's attempt to procure a Florida domicile after years of being domiciled elsewhere, was for the sole purpose of injuring the plaintiff and as part of the plan and scheme to defraud her of her marital and contractual rights.

32. That the defendant's willful failure to disclose to the Florida Court the previous New York findings on cruelty was done for the sole purpose of maliciously injuring the plaintiff by depriving her of her contractual rights under the aforementioned ante-nuptial agreement.

33. That all of the foregoing acts of the defendant were a part of the defendant's willful and malicious scheme to deprive plaintiff of her contractual and marital rights.

FOURTH CLAIM

34. Plaintiff repeats and realleges each and every allegation contained in paragraphs marked "1" through "33" with the same force and effect as if

AMENDED COMPLAINT

more fully set forth herein.

35. That in furtherance of the defendant's scheme to deprive the plaintiff of her contractual rights under said ante-nuptial agreement, the defendant is attempting to secrete and/or remove said assets from the jurisdiction of this Court and thus defeat plaintiff's contractual rights.

FIFTH CLAIM

36. Plaintiff repeats and realleges each and every allegation contained in paragraphs marked "1" through "35" with the same force and effect as if more fully set forth herein.

37. By reason of the aforementioned and continuing fraudulent scheme and plan perpetrated by the defendant herein, as aforesaid, including but not limited to the institution of the fraudulent action for a divorce in the Circuit Court for Dade County, Florida, on or about March 24, 1967, upon grounds of plaintiff's alleged cruelty - which had been fully tried and determined against defendant herein in his own action for an annulment in the Supreme Court of the State of New York, by the Judgment of that Court dated December 12, 1966, and

AMENDED COMPLAINT

the Decision of that Court dated November 30, 1967 which said Judgment and Decision has been fully affirmed by the highest courts of this State - plaintiff herein was compelled to retain counsel in the State of New York, to counsel and guide her with respect to defendant's Florida action for a divorce and to institute and prosecute this action in this Honorable Court and to prosecute or defend, as the case may require, any appeals which may be taken by either party herein. Upon information and belief, the reasonable value and cost to the plaintiff for such professional services will be \$150,000.00. By reason thereof, plaintiff has been damaged in the sum of \$150,000.00.

WHEREFORE, plaintiff demands judgment:

(a) On the first claim, declaring that the judgment made and entered in the Circuit Court of Florida, in and for Dade County on the 12th day of May, 1967 a nullity and declaring that the plaintiff herein is the lawful wife of the defendant, and declaring that the ante-nuptial agreement and amendments are still in full force and effect.

AMENDED COMPLAINT

(b) On the second claim declaring the judgment made and entered in the Circuit Court of Florida, in and for Dade County, on the 12th day of May, 1967 not to be a judgment of a Court of competent jurisdiction as defined in the parties' ante-nuptial agreement and declaring the ante-nuptial agreement and amendments thereto in full force and effect.

(c) As to the third claim awarding plaintiff damages in the sum of three million dollars.

(d) As to the fourth claim directing the defendant to hold the proceeds of the sale of 47,000 shares of Schenley stock in trust for the plaintiff to be distributed to her in the event the defendant predeceases the plaintiff.

(e) As to the fifth claim demands judgment in the sum of \$150,000.00.

s/ Scoll & Coleman
SCOLL & COLEMAN
Attorneys for Plaintiff
Susan L. Rosenstiel
Office and Post Office
Address
342 Madison Avenue
New York, New York 10017
OX 7-8383

EXHIBIT "A" - ANTE-NUPTIAL AGREEMENT - ANNEXED
TO AMENDED COMPLAINT

AGREEMENT SETTLING PROPERTY RIGHTS

THIS AGREEMENT made this 29th day of November, 1956, by and between LEWIS S. ROSENSTIEL, residing in Greenwich, Fairfield County, Connecticut (hereinafter called "First Party"), and SUSAN E. LISSMAN KAUFMANN, residing in New York City, New York (hereinafter called "Second Party"), WITNESSETH:

WHEREAS:

(A) The said First Party and the said Second Party contemplate that they may enter into marriage with each other although no agreement to marry has yet been entered into between them, and this agreement precedes and is preliminary to any such agreement to marry; and

(B) Said First Party has an adult son and daughter by a former marriage (said son and daughter respectively are married, said son has four minor children and said daughter has two minor children) and a minor daughter by another former marriage, and said Second Party has previously been married and represents that she has been validly divorced and has no children nor grandchildren; and

EXHIBIT "A" - ANTE-NUPTIAL AGREEMENT - ANNEXED
TO AMENDED COMPLAINT

(C) Said First Party is prominent in business as a large stockholder; director and executive of Schenley Industries, Inc., with executive offices in New York City, New York. An approximate statement of the assets and liabilities of said First Party is attached hereto (as Exhibit A) with an approximate statement of his income (as Exhibit B) (which exhibits have been initialed by the parties hereto), and said Second Party acknowledges that adequate disclosure of the properties, estate and income of said First Party has been made to her complete understanding and satisfaction and that said First Party has made available for examination by the said Second Party such data and information concerning the properties, estate and income of said First Party as said Second Party shall desire; and

(D) Said Second Party owns property in her own right having a present market value in excess of \$400,000.00; and

(E) Said First Party and said Second Party are desirous of making mutual settlement of property rights between them in the event of their marriage to each other, to be in lieu of all rights, interests and

EXHIBIT "A" - ANTE-NUPTIAL AGREEMENT - ANNEXED
TO AMENDED COMPLAINT

claims which either might, could or would have as a surviving spouse, survivor or heir, in or to real estate of the other, and in lieu of any distributive share in personal estate of the other, and in lieu of all other rights, interests or claims which either might, could or would have as surviving spouse, heir, distributee, survivor or next of kin of the other or otherwise; and

(F) Said Second Party has heretofore submitted an unexecuted and undated, but otherwise complete, copy of this instrument to counsel of her own selection and has been advised by him as to its terms and conditions and especially as to the nature and extent of the rights, interests and claims which she might, could or would have as the surviving spouse of said First Party, or otherwise, except for this agreement;

NOW, THEREFORE, in consideration of the marriage between the parties hereto and of the mutual promises and agreements herein set forth, it is mutually understood, covenanted and agreed as follows:

(1) The said First Party covenants and agrees that he will by a due and valid last will and

EXHIBIT "A" - ANTE-NUPTIAL AGREEMENT - ANNEXED
TO AMENDED COMPLAINT

testament create a trust (hereinafter referred to as the "Trust"), which trust shall be upon substantially the following terms and conditions:

(a) The corpus of the Trust shall consist of 25,000 shares of the common stock of Schenley Industries, Inc. (hereinafter called the "Corporation") of the par value of \$1.40 per share of the class of such stock presently issued and outstanding or any shares of stock or other securities or other property received by the said First Party in exchange therefor or in respect thereof upon any recapitalization, reorganization, spin-off, split-up, split-off, merger, consolidation or other change in the corporate or capital structure of the Corporation, it being the intention of the parties that the corpus of the Trust shall consist of 25,000 shares of said common stock of the Corporation, or stock, securities or other property received in exchange therefor or in respect thereof, as aforesaid, provided same are owned by said First Party at the time of his death, but without regard to the value thereof at such time.

If upon the death of the said First Party, he shall not be the owner of said total of said 25,000

EXHIBIT "A" - ANTE-NUPTIAL AGREEMENT - ANNEXED
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shares of said common stock of the Corporation, or stock, securities or other property received in exchange therefor or in respect thereof, as hereinbefore set forth, then the corpus of the Trust shall consist of so many of such shares of said stock or other securities or other property received in exchange therefor or in respect thereof as shall then be owned by the said First Party, plus such additional cash or other property or both which may be required to establish in value at the time of the death of the said First Party a trust corpus of the value of \$450,000 and if no such shares of said stock or other securities or other property received in exchange therefor or in respect thereof shall be then owned by the said First Party, then such trust corpus shall consist of cash or other property or both of the value at such time of \$450,000.

(b) The Trust shall be created as aforesaid free of any state or Federal estate, inheritance or similar taxes.

(c) The Trustees shall invest and reinvest the corpus of the Trust and receive and collect the income thereof and after paying the expenses of said

EXHIBIT "A" - ANTE-NUPTIAL AGREEMENT - ANNEXED
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Trust, shall pay and turn over the income derived therefrom, in quarterly or more frequent installments, to the said Second Party for life, provided, however, that if the said Second Party shall remarry, then from and after such remarriage, the Trustees shall pay and turn over to the Second Party 1/2 of such net income for life and the remaining 1/2 of such net income shall be paid to such person or persons and in such manner as the said First Party, in and by his last will and testament, shall appoint and direct. Upon the death of the said Second Party, the Trustees shall distribute, pay and turn over the principal or corpus of the Trust to such persons and in such manner, whether outright or in trust, as the said First Party shall, in and by his last will and testament, appoint and direct. If the said First Party shall fail to make disposition of any income or of the principal of the Trust in and by his last will and testament as hereinbefore provided, then such income or principal, as the case may be, shall descend to, vest in and be distributed to such person or persons as shall be entitled thereto under and in

EXHIBIT "A" - ANTE-NUPTIAL AGREEMENT - ANNEXED
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accordance with the provisions of paragraph (4) of this agreement.

(d) If the net income payable to the said Second Party from the Trust shall, in any year reckoned from the date of death of the said First Party, be less than the sum of \$12,000, then the Trustees shall pay and turn over to the said Second Party, out of the principal of the Trust, the difference between the amount of such net income and said sum of \$12,000, provided that if the said Second Party shall remarry and the net income payable to the said Second Party shall in any year be less than the sum of \$6,000, then said Trustees shall pay and turn over to the said Second Party out of the principal of the Trust the difference between the amount of such net income and the sum of \$6,000.

(e) The Trustees under the Trust shall be a corporate trustee having a principal place of business in the Borough of Manhattan, City of New York, together with such individual trustees as the said First Party, in and by his last will and testament, shall duly appoint. During the term of the Trust, Louise Frank, a daughter of the said First Party,

EXHIBIT "A" - ANTE-NUPTIAL AGREEMENT - ANNEXED
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and in the event of her death, disability or failure for any reason to act, *her husband Sidney E. Frank and if he does not act** then Sidney Striker, a business associate of the said First Party, shall have the sole right to make final determination in respect of all investments and reinvestments of the Trust and to exercise all voting rights, or to direct the Trustees to exercise all voting rights, in respect of all securities held by the Trust and accordingly, the trustees shall at all times during the term of the Trust adhere in all respects to the written directions of the person or persons having such authority respecting the making or retention of any and all investments for the account of the Trust and the voting of all securities held therein, and the trustees shall accordingly be absolved from any liability or responsibility in respect of action taken or joined in by it upon any such written directions. The said First Party reserves the right, to be exercised in and by his last will and testament, to substitute any other person or persons in the place and stead of the said

*The words in italics were handwritten insertions on the original

EXHIBIT "A" - ANTE-NUPTIAL AGREEMENT - ANNEXED
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Louise Frank, *Sidney E. Frank* or Sidney Striker, or both, and such substitutes shall be vested with all the rights, powers and and discretion hereinbefore provided in respect of the said Louise Frank *Sidney E. Frank* and Sidney Striker.

Upon the death, disability or failure for any reason to act of ~~xxxx~~ the said Louise Frank *Sidney E. Frank* and Sidney Striker and any persons designated in their place and stead to exercise the aforementioned rights, powers and discretion, all such rights, powers and discretion shall vest in and be exercised by the Trustees under the Trust.

(f) Neither the Trustees nor any persons vested with the rights, powers and discretion as provided in subparagraph (e) above shall ever be required to furnish any bond or other security in any jurisdiction for the faithful performance of their duties.

(g) The Trustees, and any substitutes, shall have the power, authority and discretion, without application to any court, and in addition to the rights and powers otherwise provided by law (i) to hold and retain in trust any assets or property received under

EXHIBIT "A" - ANTE-NUPTIAL AGREEMENT - ANNEXED
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the Trust and any property received in exchange therefor, either permanently or temporarily, and either with or without diversification as they in their sole judgment and uncontrolled discretion shall determine; (ii) to sell, exchange or otherwise dispose of the same, either for cash or upon credit, secured or unsecured, and either at public or private sale; (iii) to invest in any property, real or personal, tangible or intangible, without limitation to legal investments for fiduciaries and without requirement for diversification; (iv) to grant options and to participate as to assets or property held by them in reorganizations or rearrangements, upon any terms; (v) to vote any securities and to grant proxies therefor; (vi) to borrow money, without personal liability, upon any terms and conditions deemed advisable, and to secure repayment thereof; (vii) to adjust, compromise or arbitrate any claims or demands of or against the Trust, including tax matters; (viii) to hold securities or property in the names of nominees, or in such form as to pass by delivery; (ix) to pay, in their discretion, premiums on bonds or other securities which they may purchase, and in the event that they shall invest or hold any part of the trust

EXHIBIT "A" - ANTE-NUPTIAL AGREEMENT - ANNEXED
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estate in any interest or income bearing securities at more than par value thereof, then the entire interest received therefrom shall be treated as income and distributed as such; (x) except as herein otherwise provided, to allocate receipts between income and corpus and to determine the charges which shall be made thereto; and (xi) to exercise all their functions, authority and discretion under the Trust notwithstanding the termination of the Trust, pending payment and distribution of the principal or corpus thereof.

(h) Any dividend which shall be payable in the stock of any corporation whether the stock be that of the declarant corporation, or that of another corporation, shall be principal and not income of the Trust.

(2) Each of the said parties hereto is hereby barred from any and all rights, interests or claims by way of dower, curtesy, inheritance, descent and distribution, allowances of any kind provided by law for a surviving spouse, and all rights, interests or claims as widow, widower, heir, distributee, survivor or next of kin, and all other rights,

EXHIBIT "A" - ANTE-NUPTIAL AGREEMENT - ANNEXED
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interests or claims whatsoever in or to the estate of the other, whether real or personal and wherever situated and whether now owned or hereafter acquired, which in any manner would or could arise or accrue by virtue of marriage between said parties, except as set forth in this agreement.

(3) Each of said parties hereto does hereby waive, release and relinquish to the other and to the heirs, personal representatives, devisees, legatees and assigns of the other, all rights, interest or claims of dower, curtesy, inheritance, descent and distribution, allowances of any kind provided by law for a surviving spouse, and all rights, interests or claims as widow, widower, heir, distributee, survivor or next of kin, the right to act as executor or administrator of the estate of the other party, and all other rights, interests or claims whatsoever in or to the estate of the other whether real or personal and wherever situated and whether now owned or hereafter acquired which in any manner would or could arise or accrue by virtue of marriage between said parties, except as set forth in this agreement. This provision is intended to and shall constitute a mutual waiver

EXHIBIT "A" - ANTE-NUPTIAL AGREEMENT - ANNEXED
TO AMENDED COMPLAINT

and release of any right of election by the parties to take against each other's wills, now or hereafter in force, under the present or future laws of any jurisdiction whatsoever.

(4) Except as otherwise provided in paragraph (1) hereof, each of said parties hereto shall be at full liberty to dispose of all of his or her property, real and personal, now owned or hereafter acquired, during his or her lifetime, or by his or her last will and testament, and upon the death of either of said parties, said property which then remains undisposed of (whether by inter vivos disposition or by last will and testament) shall descend to, vest in and be distributed to such person or persons as shall be entitled thereto by the applicable laws of descent and distribution then in effect, as though the marriage between the parties hereto had not occurred and as though the deceased party had died unmarried.

(5) Each of said parties hereto agrees to execute, acknowledge and deliver upon request of the other, at any time and from time to time, any and all instruments of release, conveyance and waiver to enable

EXHIBIT "A" - ANTE-NUPTIAL AGREEMENT - ANNEXED
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the other to dispose of or encumber any and all real property now or hereafter owned by him or her, free and clear from any apparent rights of dower, curtesy or otherwise therein, and such other or further instruments upon the death of the other as may be reasonable requested by his or her heirs, executors, administrators or assigns, to evidence and carry into effect the release and waiver of all his or her rights, interests, claims or demands as aforesaid.

(6) Nothing herein contained shall prevent the said First Party, in his sole discretion, from increasing the benefits herein provided for the said Second Party, nor from making gifts to the said Second Party from time to time either in his lifetime or by will.

(7) Each of the parties hereto understands and agrees that notwithstanding anything in this agreement contained which might be read, construed or interpreted to the contrary, each and every benefit or provision to accrue under the terms and provisions of this agreement to the said Second Party is contingent upon the said Second Party surviving the said First Party, and also upon the said parties hereto not having

EXHIBIT "A" - ANTE-NUPTIAL AGREEMENT - ANNEXED
TO AMENDED COMPLAINT

been divorced or separated by decree of a court of competent jurisdiction, or separated by writted agreement. If said Second Party shall not survive said First Party, or if said parties shall have been divorced or separated by decree of a court of competent jurisdiction or separated by written agreement, said Second Party shall not be entitled to any of the benefits or provisions to accrue to her hereunder, and in such event each and all of the waivers and releases by said Second Party of the rights, interests and claims described in paragraphs (2), (3), (4) and (5) hereof, and all agreements and undertakings of said Second Party under this agreement, shall nevertheless be of full force and effect, and shall be conclusive and binding upon her.

(8) If said First Party shall fail to create the Trust described in paragraph (1) of this agreement in accordance with the terms and provisions thereof, the Second Party shall be entitled to such remedies against the estate of said First Party, either at law or in equity, including, but no limited to, the remedy of specific performance, to which the said Second Party may be entitled, but it is expressly

EXHIBIT "A" - ANTE-NUPTIAL AGREEMENT - ANNEXED
TO AMENDED COMPLAINT

agreed that the failure of said First Party to create said Trust as aforesaid shall not, to any extent, nor in any manner limit, affect or impair the waivers and releases by said Second Party of the rights, interests and claims described in paragraphs (2), (3), (4) and (5) hereof, nor any of the agreements nor undertakings of the Second Party under this agreement, and such waivers, releases, undertakings and agreements shall nevertheless be of full force and effect and shall be binding and conclusive upon said Second Party.

(9) The said Second Party acknowledges that she is satisfied with the provisions herein made for her benefit in relation to the approximate means of the said First Party as disclosed to her, and as disclosed in the Exhibits A and B hereto attached.

(10) The terms, validity and interpretation of this agreement are to be determined and governed by the laws of the State of New York.

(11) If the said Second Party predeceases the said First Party this agreement shall terminate upon her death.

(12) The consideration for this agreement is the mutual promises herein contained and the

EXHIBIT "A" - ANTE-NUPTIAL AGREEMENT - ANNEXED
TO AMENDED COMPLAINT

marriage to be solemnized. If the marriage does not take place this agreement shall be in all respects and for all purposes null and void.

(13) This agreement contains the entire understanding of the parties. There are no representations, warranties, promises, covenants or undertakings, real or otherwise, other than those set forth herein. This agreement cannot be changed orally.

(14) It is not the intention of the parties hereto to create or establish by this agreement any rights in favor of any persons other than the parties hereto, and accordingly the parties shall have the right to alter, modify, amend or cancel any of the provisions of this agreement at any time by mutual consent of the parties in writing.

(15) This agreement shall inure to the benefit of and shall be binding upon the heirs, distributees, executors and administrators of the parties.

IN WITNESS WHEREOF, the said First Party and the said Second Party have hereunto set their

EXHIBIT "A" - ANTE-NUPTIAL AGREEMENT - ANNEXED
TO AMENDED COMPLAINT

hands and seals in the City of New York, New York,
on the date aforesaid.

Witnesses:

s/ Robert S. Marx s/ Lewis Rosenstiel (L.S.)

s/ Sidney A. Florea s/ Susan E. Lissman-Kaufman (L.S.)

STATE OF NEW YORK,)
 : SS.:
COUNTY OF NEW YORK,)

On the 29th day of November, 1956, before me
personally came LEWIS S. ROSENSTIEL and SUSAN E. LISSMAN
KAUFMANN, to me known to be the individuals described in
and who executed the foregoing instrument, and acknowledged
that they executed the same.

Evelyn Boehm
Notary Public

EVELYN BOEHM
Notary Public, State of New York
No. 41-0236650
Qualified in Queens County
Cert. filed N. Y. County Clerk
Term Expires March 20, 1957

EXHIBIT A - ANNEXED TO ANTE-NUPTIAL AGREEMENT

LEWIS S. ROSENSTIEL

STATEMENT OF ASSETS AND LIABILITIES

OCTOBER 31, 1956

ASSETS

Cash in Banks	\$ 65,000	
Accounts and Notes Receivable	528,000	
Cash Surrender-Life Insurance	443,000	
Securities (Including Schenley holdings)		
(11/27/56 Market Value Approximately \$9,223,000)	2,138,000	
Real Estate - Improvements and Furniture (Net)	764,000	
Oil and Gas Properties (Net)	950,000	
Yachts and Automobiles	516,000	
Investment in Conyers Farm	360,000	
	<u> </u>	
Total Assets		\$5,764,000

LIABILITIES

Notes Payable	\$1,207,000	
Loans Payable	41,000	
Taxes Payable	3,000	
	<u> </u>	
Total Liabilities		\$1,251,000
Lewis S. Rosenstiel, Capital		\$4,513,000

NOTE: Assets listed above are per books and at cost.

[Signature]

Have read

Susan E. Lisman Kaufman

EXHIBIT B - ANNEXED TO ANTE-NUPTIAL AGREEMENT

LEWIS S. ROSENSTIEL

STATEMENT OF INCOME, PROFIT AND LOSS FOR TEN MONTH PERIOD

JANUARY 1, 1956 TO OCTOBER 31, 1956

INCOME

Sales of Oil and Gas	\$399,000	
Dividends	353,000	
Salary	125,000	
Profit on Sale of Securities	37,000	
Rents and Interest	<u>5,000</u>	
Total Income		\$919,000

EXPENSES

Business Expenses	\$ 46,000	
Taxes	10,000	
Interest	39,000	
Oil Expenses	381,000	
Conyers Farm	<u>40,000</u>	
Total Expenses		<u>516,000</u>
Net Income - Before provision for Taxes		\$403,000

=====

NOTE: Expenses not listed above:

Personal Expenses	\$177,000
Auto & Yacht Expenses	56,000
1955 Federal Income Tax	
Payment made in 1956	158,000
1956 Fed. Inc. Tax Estimate	170,000

Have read

Susan E. Lissman Kaufman

EXHIBIT "B" - AMENDMENT TO ANTE-NUPTIAL AGREEMENT -
ANNEXED TO AMENDED COMPLAINT

A M E N D M E N T

WHEREAS, LEWIS S. ROSENSTIEL and SUSAN E. ROSENSTIEL (Formerly known as SUSAN E. LISSMAN KAUFMANN) residents of Greenwich, Fairfield County, Connecticut, have executed an agreement entitled "Agreement Settling Property Rights", dated November 29, 1956; and

WHEREAS, it is their concerted desire to amend certain provisions therein contained; and

WHEREAS, SUSAN E. ROSENSTIEL has heretofore submitted an unexecuted and undated, but otherwise complete, copy of this instrument to counsel of her own selection, and has been advised by him of its terms and conditions,

NOW, THEREFORE, it is mutually understood, covenanted and agreed that the aforementioned agreement is herewith changed in the following respects:

1. The following sentence shall be added to and made a part of paragraph (1), subsection (a):

"Notwithstanding anything anywhere in this Agreement which might be construed to the contrary, it is the intent of both Parties that the shares of stock to be placed in the Trust shall carry and include the proper proportion with respect thereto of any

EXHIBIT "B" - AMENDMENT TO ANTE-NUPTIAL AGREEMENT -
ANNEXED TO AMENDED COMPLAINT

stock dividends, rights and/or warrants paid and/or issued after November 29, 1956 to the date of my death and such additional shares that shall be purchased in conjunction with any such rights and/or warrants, after November 29, 1956 to the date of my death."

2. Paragraph (1), subsection (e) is stricken from the agreement, cancelled and held for naught, and the following paragraph is substituted therefor:

"(e) The Co-Trustees, under the Trust, shall be a corporate Trustee and an individual Trustee, both of whom the First Party in and by his last will and testament and/or Codicil thereto, shall duly appoint. The Corporate Trustee shall be located and authorized to do business either in the State of New York or the State of Connecticut or in both.

"During the term of the Trust, ROBERT S. MARX, or his successor as hereinafter set forth, shall have the sole right to make any final determination in respect to all investments and reinvestments of the Trust, and to exercise all voting rights or to direct the Co-Trustees to exercise all voting rights with respect to all securities held by the Trust, and accordingly the Trustees shall at all times during the

EXHIBIT "B" - AMENDMENT TO ANTE-NUPTIAL AGREEMENT -
ANNEXED TO AMENDED COMPLAINT

term of the Trust adhere in all respects to the written directions of said ROBERT S. MARX or his successor as hereinafter named and shall accordingly be absolved from any liability or responsibility in respect to any such action taken by them upon any such written directions. In the event of the death, disability or failure for any reason to act of said ROBERT S. MARX, then and in that event LAWRENCE I. LEVI, of Detroit, Michigan, shall succeed in his place and stead to his rights, powers and discretion as above set forth. In the event of the death, disability or failure for any reason to act of said LAWRENCE I. LEVI, then and in that event all such rights, powers and discretion shall vest in and be exercised by the Trustees under the Trust."

3. Paragraph 10 shall be amended to read as follows:

"The terms, validity and interpretation of this agreement and all amendments, addendums, or modifications thereof, are to be interpreted and governed according to the laws of the State of New York."

EXHIBIT "B" - AMENDMENT TO ANTE-NUPTIAL AGREEMENT -
ANNEXED TO AMENDED COMPLAINT

4. A paragraph (16) is added to read as follows:

"(16) The term "Trustees" or "Trustee" wherever used herein shall be construed in the singular or plural as the context of this Agreement or any amendment, addendum or modification thereof may require."

IN WITNESS WHEREOF, the said First Party and the said Second Party have hereunto set their hands and seals in the City of New York, State of New York, on the _____ day of September, 1957.

Witnesses:

John H. [illegible]

Lewis S. Rosenstiel
Lewis S. Rosenstiel

Patricia A. [illegible]

Susan E. Rosenstiel
Susan E. Rosenstiel

EXHIBIT "C" - SECOND AMENDMENT TO ANTE-NUPTIAL
AGREEMENT - ANNEXED TO AMENDED COMPLAINT

SECOND AMENDMENT

WHEREAS, Lewis S. Rosenstiel and Susan E. Rosenstiel (known as Susan E. Lissman Kaufmann prior to her marriage to said Lewis S. Rosenstiel) residents of Greenwich, Fairfield County, Connecticut, have executed an agreement entitled "Agreement Settling Property Rights" dated November 29, 1956, and an Amendment to said Agreement dated September 13, 1957; and

WHEREAS, it is their mutual desire to amend certain provisions contained in said Agreement as heretofore amended; and

WHEREAS, the said Susan E. Rosenstiel has been duly advised of and fully understands the terms and conditions of this Instrument;

NOW, THEREFORE, it is mutually understood, covenanted and agreed that the aforementioned Agreement as heretofore amended is herewith changed and amended in the following respects:

1. Numbered paragraph (1), including subparagraphs (a) to (h) inclusive, of said Agreement as heretofore amended is herewith changed to read as follows:

EXHIBIT "C" - SECOND AMENDMENT TO ANTE-NUPTIAL
AGREEMENT - ANNEXED TO AMENDED COMPLAINT

(1) The said First Party covenants and agrees that he will by a due and valid last will and testament bequeath outright to said Second Party, upon condition that she shall survive him, and upon further condition that at the time of his death the said parties have not been divorced or separated by decree of a court of competent jurisdiction, or separated by written agreement, such number of shares of the common capital stock of Schenley Industries, Inc. (hereinafter called the "Corporation") or any shares of stock or other securities or other property received by said First Party in exchange therefor or in respect thereof upon any recapitalization, reorganization, spin off, split up, split off, merger, consolidation or other change in the corporate or capital structure of the Corporation, as shall be, at the date of the death of the First Party, the equivalent of 25,000 shares of the common stock of the Corporation of the par value of \$1.40 per share of such stock as issued and outstanding stock of the Corporation on November 29, 1956, plus all stock dividends, rights and/or warrants paid and/or issued with respect to such 25,000 shares after November 29,

**EXHIBIT "C" - SECOND AMENDMENT TO ANTE-NUPTIAL
AGREEMENT - ANNEXED TO AMENDED COMPLAINT**

1956, to the date of death of said First Party;
Provided, however, that if upon the death of said
First Party he shall not then be the owner of suffi-
cient common stock of the Corporation or stock,
securities or other property received in exchange
therefor or in respect thereof as hereinbefore set
forth, to meet said bequest, then said bequest to
said Second Party shall be of so many of such shares
of said stock or other securities or other property
received in exchange therefor or in respect thereof
as hereinbefore set forth as shall then be owned by
said First Party, plus such additional money or
property or both as may be required to make the total
value of such bequest to said Second Party not less
\$450,000.00; and if no such shares of said stock or
other securities or other property received in exchange
therefor or in respect thereof as hereinbefore set
forth shall be then owned by the said First Party,
then such bequest to said Second Party shall consist
of cash or other property or both of the value at such
time of \$450,000.00. Any such bequest shall be free
of any state or federal estate, inheritance or
similar taxes.

EXHIBIT "C" - SECOND AMENDMENT TO ANTE-NUPTIAL
AGREEMENT - ANNEXED TO AMENDED COMPLAINT

This paragraph (1) above written shall be substituted in lieu of said paragraph (1), subparagraphs (a) to (h) inclusive in the main Agreement Settling Property Rights dated November 29, 1956, as amended by the first Amendment dated September 18, 1957, and said paragraph (1), subparagraphs (a) to (h) inclusive in said original Agreement Settling Property Rights dated November 29, 1956, as amended by the Amendment dated September 18, 1957, is hereby deleted and cancelled.

2. Numbered paragraph (8) of said Agreement as heretofore amended is herewith changed to read as follows:

(8) If said First Party shall fail to make in a due and valid last will and testament the bequest or alternative bequest described in paragraph (1) of this Agreement in accordance with the terms and provisions thereof, the Second Party shall be entitled to such remedies against the Estate of said First Party, either at law or in equity, including, but not limited to, the remedy of specific performance, to which the said Second Party may be entitled, but it is expressly agreed that the failure of said First Party to validly

EXHIBIT "C" - SECOND AMENDMENT TO ANTE-NUPTIAL
AGREEMENT - ANNEXED TO AMENDED COMPLAINT

make such bequest as aforesaid shall not, to any extent, nor in any manner limit, affect or impair the waivers and releases by said Second Party of the rights, interests and claims described in paragraphs (2), (3), (4) and (5) of said original Agreement Settling Property Rights dated November 29, 1956, nor any of the agreements nor undertakings of the Second Party under said Agreement, and such waivers, releases, undertakings and agreements shall nevertheless be of full force and effect and shall be binding and conclusive upon said Second Party.

This paragraph (8) as above written shall be substituted in lieu of said paragraph (8) in the said Agreement Settling Property Rights dated November 29, 1956.

3. Numbered paragraph (16) added to said original Agreement Settling Property Rights dated November 29, 1956, by the Amendment dated September 18, 1957, is herewith deleted and cancelled.

4. In each and all respects, except as hereinabove specifically amended, the original Agreement Settling Property Rights dated November 29, 1956, as amended by Amendment dated September 18, 1957,

EXHIBIT "C" - SECOND AMENDMENT TO ANTE-NUPTIAL
AGREEMENT - ANNEXED TO AMENDED COMPLAINT

and all of the terms and provisions thereof, is fully
approved and confirmed and continued in full force
and effect.

IN WITNESS WHEREOF, the said First Party and
the said Second Party have hereunto set their hands and
seals in the Town of Greenwich, State of Connecticut,
on the 15 day of June, 1959.

WITNESSES:

Irene M. C. Padden

Lewis S. Rosenthal
Lewis S. Rosenthal

Michael H. Rosenthal

Susan E. Rosenthal
Susan E. Rosenthal

AMENDED ANSWER TO AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendant, LEWIS S. ROSENSTIEL, by Greenbaum, Wolff & Ernst and Kurtz & Vassallo, his attorneys, for his amended answer to the amended complaint herein:

ANSWERING PLAINTIFF'S FIRST CLAIM

1. Denies each and every allegation contained in paragraphs 1, 4 and 13 thereof.

2. Denies each and every allegation contained in paragraph 2 thereof, except admits that plaintiff is presently, and upon information and belief, since in or about the last week of October, 1961 has been, a resident of the City and State of New York and that commencing in or about July 1963 plaintiff resided at the Regency Hotel, Park Avenue and 61st Street, Borough of Manhattan, City and State of New York.

3. Admits each and every allegation contained in paragraph 3 thereof, except alleges that until in or about January 1965 defendant was a resident of the State of Connecticut and that in or about January 1965 defendant became a resident of Dade County, Florida.

AMENDED ANSWER TO AMENDED COMPLAINT

4. Admits each and every allegation contained in paragraph 5 thereof, except denies that the marital domicile of the parties was 5 East 80th Street, Borough of Manhattan, City of New York, and alleges that in a proceeding brought by plaintiff in or about November 1961, in the Supreme Court of the State of New York, County of New York, that Court made a judicial finding that New York City was not the marital domicile of the parties.

5. Denies each and every allegation contained in paragraphs 6, 7, 8 and 11 thereof, except admits that on or about November 29, 1956 the parties entered into an ante-nuptial agreement, a copy of which is annexed as Exhibit "A" to plaintiff's complaint; that thereafter, on or about September 18, 1957 and June 15, 1959, during their marriage and cohabitation as man and wife, the parties executed two alleged amendments to said ante-nuptial agreement, copies of which are annexed as Exhibits "B" and "C" to plaintiff's complaint; refers to said documents for the terms, legal import and effect thereof; and alleges that an action is pending in the Supreme Court of the State of New York, County of New York, wherein plaintiff seeks

AMENDED ANSWER TO AMENDED COMPLAINT

a vacatur of said ante-nuptial agreement on the ground that her consent to same was procured by defendant's alleged fraud.

6. Denies each and every allegation contained in paragraphs 9 and 10 thereof, except admits that defendant sold his shares of Schenley stock.

7. Admits each and every allegation contained in paragraph 12 thereof, except alleges that jurisdiction in said action was predicated upon plaintiff's claim of New York residence.

8. Denies each and every allegation contained in paragraphs 13, 14, 26 and 27 thereof, refers to the pleadings, proceedings, and judgments in said action for the terms, legal effect and import thereof, and alleges that defendant moved before Mr. Justice Helman for a dismissal of plaintiff's alimony application upon the additional ground that she was collaterally estopped from relitigating the question of her marital fault as same affected her right to support, by the decision, opinion and judgments of the Civil Court of the City of New York, County of New York, later reversed in part on appeal, in a consolidated action

AMENDED ANSWER TO AMENDED COMPLAINT

entitled "Bonwit Teller, Division of 721 Corp., Plaintiff -against- Lewis Rosenstiel and Susan Rosenstiel, Defendants (Index No. 9397/62)", wherein it was held that plaintiff was not entitled to support by virtue of her abandonment of defendant and her cruel and inhuman treatment of defendant of such nature and degree as would justify, and authorize, a judgment of marital separation in his favor and against plaintiff under the then laws of the State of New York; that Mr. Justice Helman denied said application on the merits; that on appeal to the Appellate Division of the Supreme Court of the State of New York for the First Judicial Department said Court, in affirming and modifying the alimohy award made by Justice Helman, declined to review said ruling on the merits, and to judicially note the record and proceedings had in said Civil Court; that on appeal, the Court of Appeals of the State of New York affirmed the order of the Appellate Division as aforesaid.

9. Denies each and every allegation contained in paragraphs 15 and 28 thereof, except admits

AMENDED ANSWER TO AMENDED COMPLAINT

that on or about March 24, 1967, defendant commenced an action against plaintiff for divorce in Dade County, Florida, the place of his residence since in or about January, 1965, upon the separate grounds recognized by the laws and statutes of Florida, that plaintiff was guilty of "extreme cruelty" toward defendant and had "habitually indulged in violent and ungovernable temper" toward him; refers to the Notice of Suit, Complaint for Divorce, judgment for divorce and the proceedings had in said action for the content, legal import and effect thereof; and alleges that there had been no prior determination in any Court affecting the marital status of the parties, excepting the judgments of the Courts of the State of New York, described and referred to in paragraph 13 of plaintiff's amended complaint, determining that the parties were validly married on or about November 30, 1956 in accordance with the laws of the State of New York--which judgments constitute no bar in law to an action for divorce or other marital relief.

10. Denies each and every allegation contained in paragraphs 16 and 17 thereof, except

AMENDED ANSWER TO AMENDED COMPLAINT

alleges that on or about April 5, 1967, following plaintiff's receipt of the Notice of Suit and Complaint instituting defendant's action for divorce in Dade County, Florida, plaintiff, by her attorneys, moved, by order to show cause, in the Supreme Court of the State of New York, County of New York, for an order against defendant, as well as his attorneys and agents, enjoining the further prosecution of said action for divorce; that the grounds of plaintiff's application for injunctive relief in said State Court were, and are, identical to those urged in this Court; that plaintiff was afforded a full hearing on said application on the merits; that by order and memorandum opinion dated April 21, 1967, Special Term of said Court denied plaintiff's prayer for injunctive relief; that by order to show cause dated April 24, 1967, plaintiff thereupon moved in the Appellate Division of the Supreme Court of the State of New York, for the First Judicial Department, for a restraining order enjoining further prosecution of said action for divorce in Dade County, Florida, pending appeal from the order and opinion of Special Term, dated April 21, 1967; that by order

AMENDED ANSWER TO AMENDED COMPLAINT

dated May 4, 1967, said Court unanimously denied plaintiff's motion for injunctive relief pending appeal; that two days prior to the entry of said order, said Court caused the Confidential Clerk thereof to communicate to counsel for both parties that plaintiff's prayer for injunctive relief would be denied so as to afford plaintiff the opportunity to take further proceedings in this State or in the State of Florida in defense of defendant's action for divorce; that plaintiff's counsel thereupon sought an ex parte order of a Justice of the Court of Appeals of the State of New York enjoining said Florida proceedings, but that said application was denied; that no proceedings were taken in the State of Florida by defendant or his counsel pending plaintiff's applications in the Courts of the State of New York for injunctive relief; that on the afternoon of May 4, 1967, defendant's Florida counsel filed a Praecipe for Default or Decree Pro Confesso with the Clerk of the Circuit Court for the Eleventh Circuit, in Dade County, Florida, in accordance with Florida law and procedures, and a default was duly entered against plaintiff based upon her voluntary default

AMENDED ANSWER TO AMENDED COMPLAINT

in appearance in said action; that in further accordance with Florida law and procedures, on May 5, 1967 a hearing on defendant's prayer for divorce in said action was noticed before the Hon. John J. Kehoe, Circuit Judge of Dade County, Florida, on the morning of May 12, 1967; that on or about 11:00 A.M. on the morning of May 12, 1967 defendant, his witnesses, and counsel appeared before Judge Kehoe and gave evidence in support of defendant's complaint for divorce; that at or about 11:25 A.M. on the morning of May 12, 1967, after hearing defendant's evidence and deliberation thereon, Judge Kehoe signed a judgment granting to defendant a divorce from plaintiff upon the grounds that she had been guilty of extreme cruelty toward defendant and had been guilty also of habitually indulging in violent and ungovernable temper, two separate grounds for divorce under the laws and statutes of the State of Florida; that said judgment was filed for the record with the Clerk of the Circuit Court for Dade County, Florida at 11:28 A.M. on May 12, 1967 and is final and effective under the laws of Florida; that plaintiff had every opportunity to

AMENDED ANSWER TO AMENDED COMPLAINT

appear in said action and contest defendant's prayer for relief; and that said Florida Court, as well as the Supreme Court of the State of New York on plaintiff's prior application for injunctive relief, found defendant to be a bona fide resident of Dade County, Florida since in or about January 1965.

ANSWERING PLAINTIFF'S SECOND CLAIM

11. Repeats and realleges each and every admission, denial, and allegation, made to paragraphs 1 through 17 of plaintiff's amended complaint with the same force and effect as though fully set forth herein.

12. Denies each and every allegation contained in paragraph 19 thereof.

ANSWERING PLAINTIFF'S THIRD CLAIM

13. Repeats and realleges each and every denial, admission and allegation concerning paragraphs 1 through 19 of plaintiff's amended complaint, with the same force and effect as though set forth fully herein.

14. Denies each and every allegation contained in paragraphs 21 and 22 thereof, except admits

AMENDED ANSWER TO AMENDED COMPLAINT

that both parties consulted counsel at the time of their separation and alleges, upon information and belief, that plaintiff previously consulted counsel in said connection at various times throughout the marriage and cohabitation of the parties.

15. Denies each and every allegation contained in paragraph 23 thereof, except alleges that plaintiff abandoned defendant and that following the separation of the parties, and despite the pendency of a marital action brought by defendant against plaintiff in the Supreme Court of the State of New York, County of New York, seeking an annulment of the marriage of the parties, plaintiff made no application for interim support as authorized by the statutes and laws of the State of New York, but relied, instead, upon the right of a wife who is not at fault in causing a marital separation, in proper circumstances, to make purchases on credit of goods necessary for her support and to look to her spouse for the payment therefor; that by virtue of plaintiff's stratagem as aforesaid, a plethora of litigations were brought against the parties by vendors who sold to plaintiff on credit; that 23 vendors' actions of such

AMENDED ANSWER TO AMENDED COMPLAINT

nature, pending in the Civil Court of the City of New York, County of New York, were consolidated and tried under the caption "Bonwit Teller, Division of 721 Corp., Plaintiff -against- Lewis Rosenstiel and Susan Rosenstiel, Defendants (Index No. 9397/62)"; that on or about September 22, 1966, the Court rendered a decision and opinion in writing, holding plaintiff responsible for the charges sued upon on the ground, inter alia, that plaintiff abandoned defendant and had, prior thereto, been guilty of cruel and inhuman treatment toward him of such nature and degree as would authorize and justify a decree of marital separation in defendant's favor and against plaintiff under the laws of New York; that judgments were thereupon entered against plaintiff based upon such decision and opinion and the findings contained therein which were reversed in part, on appeal; and that by judgment of the Supreme Court of the State of New York, County of New York, dated December 12, 1966 and entered December 28, 1966, alimony was awarded to plaintiff in the action for annulment brought by defendant against plaintiff in the Supreme Court of the State of New York, County of New York.

AMENDED ANSWER TO AMENDED COMPLAINT

16. Denies each and every allegation contained in paragraph 24 thereof, except admits that on or about November 9, 1961 defendant instituted an action against plaintiff in the Superior Court of the State of Connecticut, County of Fairfield, his then place of residence for over twenty-five years as found by the Supreme Court of the State of New York in an action brought by plaintiff to enjoin the prosecution of said Connecticut action, seeking an annulment of the marriage of the parties or alternately a divorce, and that on or about January 13, 1962 defendant amended his complaint in said action; refers to said complaint and amended complaint, annexed as Exhibits "D" and "E" to plaintiff's amended complaint herein, for the terms, legal effect and import thereof; admits that plaintiff specially appeared in that Connecticut action and brought an action to enjoin said action in the Supreme Court of the State of New York, County of New York, claiming in both proceedings that the Connecticut Court had no jurisdiction to determine the marital status of the parties on the ground that the parties were domiciliaries of the State of New York; that plaintiff applied, in

AMENDED ANSWER TO AMENDED COMPLAINT

the New York action brought by her for injunctive relief, for a temporary injunction against proceedings in Connecticut, that said application was denied in all respects by Special Term (32 Misc. 2d 543) and the Appellate Division (15 A.D.2d 880) of the Supreme Court of the State of New York, upon the ground, inter alia, that Connecticut was proved to be the marital domicile of the parties and defendant's place of residence for over a quarter of a century; that plaintiff procured an order in said Connecticut proceeding granting her attorneys the right to examine defendant with respect to the jurisdictional question raised by her special appearance therein; that on or about April 26, 1962 defendant's prior Connecticut counsel withdraw said action for the stated reason that plaintiff's special appearance and challenge to the jurisdiction of the Connecticut Court would delay for more than a year, a determination on the merits of defendant's claim for marital relief; and that on or about April 26, 1962, defendant instituted an action for annulment in the Supreme Court of the State of New York, County of New York, based upon defendant's residence in New York since the separation of the parties in or about October, 1961.

AMENDED ANSWER TO AMENDED COMPLAINT

17. Denies each and every allegation contained in paragraph 25 thereof, except alleges that defendant's prior attorneys, Messrs. Javits and Javits, were defendants in an action brought by defendant following their discharge as his attorneys in or about March, 1963, for an accounting of their conduct and expenditures, which action was brought in the Supreme Court of the State of New York, County of New York; that evidence was taken in said action showing that defendant had no knowledge and no participation in proceedings in the country of Mexico; and that defendant's aforementioned attorneys have, in said action, denied the allegations contained in paragraphs 14 and 15 of plaintiff's complaint.

18. Denies each and every allegation contained in paragraphs 29, 30, 31, 32 and 33 thereof, except alleges that on or about April 5, 1967, following plaintiff's receipt of the Notice of Suit and Complaint instituting defendant's action for divorce in Dade County, Florida, defendant, by her attorneys, moved, by order to show cause, in the Supreme Court of the State of New York, County of New York, for an

AMENDED ANSWER TO AMENDED COMPLAINT

order against defendant, as well as his attorneys and agents, enjoining the further prosecution of said action for divorce; that the grounds of plaintiff's application for injunctive relief in said State Court were, and are, identical to those urged in this Court; that plaintiff was afforded a full hearing on said application on the merits; that by order and memorandum opinion dated April 21, 1967, Special Term of said Court denied plaintiff's prayer for injunctive relief; that by order to show cause dated April 24, 1967 plaintiff thereupon moved in the Appellate Division of the Supreme Court of the State of New York, for the First Judicial Department, for a restraining order enjoining further prosecution of said action for divorce in Dade County, Florida pending appeal from the order and opinion of Special Term dated April 21, 1967; that by order dated May 4, 1967, said Court unanimously denied plaintiff's motion for injunctive relief pending appeal; that two days prior to the entry of said order, said Court caused the Confidential Clerk thereof to communicate to counsel for both parties that plaintiff's prayer for injunctive relief would be denied so as to

AMENDED ANSWER TO AMENDED COMPLAINT

afford plaintiff the opportunity to take further proceedings in this State or in the State of Florida in defense of defendant's action for divorce; that plaintiff's counsel thereupon sought an ex parte order of a Justice of the Court of Appeals of the State of New York enjoining said Florida proceedings, but that said application was denied, that no proceedings were taken in the State of Florida by defendant or his counsel pending plaintiff's applications in the Courts of the State of New York for injunctive relief, that on the afternoon of May 4, 1967, defendant's Florida counsel filed a Praecipe for Default or Decree Pro Confesso with the Clerk of the Circuit Court for the Eleventh Circuit, in Dade County, Florida, in accordance with Florida law and procedures, and a default was duly entered against plaintiff based upon her default in appearance in said action; that in furt her accordance with Florida law and procedures, on May 5, 1967 a hearing on defendant's prayer for divorce in said action was noticed before the Hon. John J. Kehoe, Circuit Judge of Dade County, Florida, on the morning of May 12, 1967; that on or about

AMENDED ANSWER TO AMENDED COMPLAINT

11:00 A.M. on the morning of May 12, 1967 defendant, his witnesses, and counsel appeared before Judge Kehoe and gave evidence in support of defendant's complaint for divorce; that at or about 11:25 A.M. on the morning of May 12, 1967, after hearing defendant's evidence and deliberation thereon, Judge Kehoe signed a judgment granting to defendant a divorce from plaintiff upon the grounds that she had been guilty of extreme cruelty toward defendant and had been guilty also of habit ually indulging in violent and ungovernable temper, two separate grounds for divorce under the laws and statutes of the State of Florida, that said judgment was filed for the record with the Clerk of the Circuit Court for Dade County, Florida at 11:28 A.M. on May 12, 1967 and is final and effective under the laws of Florida; that plaintiff had every opportunity to appear in said action and contest defendant's prayer for relief; and that said Florida Court, as well as the Supreme Court of the State of New York on plaintiff's prior application for injunctive relief, found defendant to be a bona fide resident of Dade County, Florida since in or about January, 1965; and that there had

AMENDED ANSWER TO AMENDED COMPLAINT

been no prior determination in any court affecting the marital status of the parties excepting the judgments of the State Courts of New York, referred to in paragraphs 12 and 13 of plaintiff's amended complaint, determining that the parties were validly married in accordance with the laws of New York, which judgments constitute no bar to an action for divorce or other marital relief in any Court having jurisdiction to grant such relief.

ANSWERING PLAINTIFF'S FOURTH CLAIM

19. Repeats and realleges each and every admission, denial and allegation made to paragraphs "1" through "33" of plaintiff's amended complaint with the same force and effect as though set forth fully herein.

20. Denies each and every allegation contained in paragraph 35 thereof.

ANSWERING PLAINTIFF'S FIFTH CLAIM

21. Repeats and realleges each and every denial, admission and allegation concerning paragraphs "1" through "35" of plaintiff's amended complaint with the same force and effect as though set forth fully herein.

AMENDED ANSWER TO AMENDED COMPLAINT

22. Denies each and every allegation contained in paragraph 37 thereof.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE
TO EACH CLAIM CONTAINED IN PLAINTIFF'S
AMENDED COMPLAINT

23. Plaintiff's amended complaint fails to state claims against defendant upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE
TO EACH CLAIM CONTAINED IN PLAINTIFF'S
AMENDED COMPLAINT

24. Defendant expressly denies that the matters in controversy exceed the sum of \$10,000. exclusive of interest and costs and plaintiff's amended complaint fails to set forth facts to warrant the conclusion that there is such an amount here involved; accordingly, defendant denies the jurisdiction of this Court in this case.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE
TO EACH CLAIM CONTAINED IN PLAINTIFF'S
AMENDED COMPLAINT

25. Defendant expressly denies that this action arises out of the Constitution or laws of the United States or that any facts exist in support of such averment in plaintiff's amended complaint; accordingly, defendant denies the jurisdiction of this Court in this case.

AMENDED ANSWER TO AMENDED COMPLAINT

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE
TO EACH CLAIM CONTAINED IN PLAINTIFF'S
AMENDED COMPLAINT

26. Plaintiff has heretofore, in prior proceedings had between the parties, denied and contested that there is a diversity of citizenship between the parties to this action, and plaintiff's amended complaint herein does not allege as a fact that there is such diversity of citizenship; accordingly, defendant denies the jurisdiction of this Court in this case.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE
TO EACH CLAIM CONTAINED IN PLAINTIFF'S
AMENDED COMPLAINT

27. This Court has no jurisdiction over the person of defendant insofar as he was never served with process commencing this action.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE
TO EACH CLAIM CONTAINED IN PLAINTIFF'S
AMENDED COMPLAINT

28. Repeats and realleges each and every allegation contained in paragraph 18 hereof, with the same force and effect as though set forth fully herein.

29. Plaintiff's commencement of said proceeding against defendant in the Supreme Court of

AMENDED ANSWER TO AMENDED COMPLAINT

the State of New York, County of New York, on or about April 15, 1967, after the alleged claims averred in plaintiff's complaint herein had accrued, based upon the same allegations contained in plaintiff's complaint in this action, constituted an election by plaintiff to seek and obtain a remedy for the alleged claims asserted in this action.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE
TO EACH CLAIM CONTAINED IN PLAINTIFF'S
AMENDED COMPLAINT

30. Repeats and realleges each and every allegation contained in paragraphs 18, 28 and 29 hereof with the same force and effect as though set forth fully herein.

31. The dismissal of plaintiff's claim for relief as aforesaid in the prior action brought by her in the Supreme Court of the State of New York, County of New York, constitutes a prior adjudication and determination of plaintiff's claims in this action.

AMENDED ANSWER TO AMENDED COMPLAINT

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE
TO EACH CLAIM CONTAINED IN PLAINTIFF'S
AMENDED COMPLAINT

32. Repeats and realleges each and every allegation contained in paragraphs 18, 28, 29, 30 and 31 hereof with the same force and effect as though set forth fully herein.

33. Said prior proceeding, brought by plaintiff on the same claim for relief set forth in her amended complaint herein, is between the same parties to this action and is presently pending and undisposed of, plaintiff having noticed an appeal from the order and opinion of Special Term denying her motion for injunctive relief, which appeal is presently pending.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE
TO EACH CLAIM CONTAINED IN PLAINTIFF'S
AMENDED COMPLAINT

34. This action is brought by plaintiff in the wrong District, and accordingly, venue is improper, because the jurisdiction of this Court is invoked solely on the ground that this action arises under the Constitution and laws of the United States and defendant is a resident of the State of Florida.

AMENDED ANSWER TO AMENDED COMPLAINT

AS AND FOR A TENTH AFFIRMATIVE DEFENSE
TO PLAINTIFF'S THIRD CLAIM

35. Plaintiff's claim is barred, in whole or in part, by the applicable statute of limitations because not commenced within the period prescribed by law therefor.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE
TO PLAINTIFF'S THIRD CLAIM

36. Plaintiff has failed to allege, and cannot prove special damages as required by law; therefore, plaintiff's Third Claim must be dismissed.

WHEREFORE, defendant respectfully demands judgment dismissing plaintiff's complaint herein and each and every claim for relief contained therein, or alternately, for an order staying further proceedings in this case pending determination of the prior, pending action in the Supreme Court of the State of New York involving identical issues and claims for relief, and granting such other and furt her relief as to this Court may seem just and proper in the premises, together with the costs and

AMENDED ANSWER TO AMENDED COMPLAINT

disbursements of this action.

Yours, etc.,

GREENBAUM, WOLFF & ERNST
437 Madison Avenue
New York, N. Y. 10022
(212) 758-4010

and

KURTZ & VASSALLO
598 Madison Avenue
New York, N. Y. 10022
(212) 421-1870

Attorneys for Defendant
Lewis S. Rosenstiel

By s/ John A. Vassallo
John A. Vassallo
A Member of the Firm

TO:

MAURICE SHORENSTEIN, ESQ.
Attorneys for Plaintiff
595 Madison Avenue
New York, N. Y. 10022

1 discuss with you that Lew is very concerned about
2 protecting you financially as he doesn't want the same
3 problem he had with his other wives," that his children from
4 his first wife have given him a great deal of trouble,
5 and that he wanted me financially protected, and they
6 were just drawing up some type of a trust fund to protect
7 my interests.

8
9 MR. NATHAN: Your Honor, before we have any more
10 of this, I would like to enter a general objection to any
11 hearsay testimony as to what Judge Marx may have said.

12 THE COURT: Well, you are, I assume, offering this
13 testimony as the statement of the agent of Mr. Rosenstiel
14 who is acting in the course of his agency?

15 MR. GRUTMAN: Yes, sir.

16 THE COURT: And therefore you put him in the
17 place of Mr. Rosenstiel and you claim an exception to the
18 hearsay rule on that basis, is that right?

19 MR. GRUTMAN: I do, your Honor.

20 THE COURT: Overruled.

21 Q Mrs. Rosenstiel, was anything else said con-
22 cerning the financial protection which Mr. Rosenstiel wanted
23 you to have?

24 A He said that I would be protected financially
25 and that as the wife of Lewis S. Rosenstiel, to represent

me-3

1 said to me that "Lew wants to amend it for your protection
2 because he is not getting along with his son or his
3 daughter, David and Louise."
4

5 Q Did he say anything else besides the fact that
6 he wanted to amend the agreement for your financial pro-
7 tection?

8 A Because he said that I have been a perfect wife
9 and more than a mother to Libby.

10 Q And Libby is the young child?

11 A Yes.

12 Q And when Judge Marx had this discussion with
13 you, did he tell you that he was drawing up this amendment?

14 A He said he would be drawing up for my financial
15 protection that will give me more financial protection.

16 Q Did you discuss this amendment with your husband?

17 A No.

18 Q Was the document, the amendment of November 1957,
19 prepared in consultation with any lawyer representing you?

20 A No.

21 Q Was Mr. Florea consulted about this to your
22 knowledge?

23 A No.

24 Q So far as you know, who prepared the document?

25 A Judge Marx.

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Judge Marx concerning this document?

A He told me that my husband wanted more financial protection for me; that he wanted me to receive it outright free of taxes, and in 1958 -- I had forgotten to say, I am sorry -- you asked me -- I was provided for -- my husband made me a present of shares in Hemisphere Limited, and Hemisphere Holding Company, which is now part of IOS Limited and Vesco.

Q Hemisphere?

A Limited and Holding -- my husband made me majority shareholder.

Q Do you still own that stock?

A I have never received -- I had received the stock.

Q Who has the certificates now?

A It is now in the hands of United States District Attorney for the Southern District, under investigation for fraud and for evasion of taxes.

Q Do you know what the Hemisphere Limited Holding Company was?

A Hemisphere Limited and Hemisphere Holding, my husband told me he was setting it up for me and for his daughter Libby, and his bookkeeper Roberts transferred funds from the Underwriters Trust to Miami and the

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SOUTHERN DISTRICT COURT REPORTERS

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THE COURT: Are you offering it?

MR. GRUTMAN: Not yet.

THE COURT: All right.

Q Mr. Lavin, have you examined these documents which have been received and marked as Plaintiff's Exhibit 4 for identification?

A Yes, sir.

Q How long have you been employed by the Lotus Club?

A 16 years.

Q And what is your present position with the club?

A Manager.

Q From having looked at the cards, can you tell whether a person is a resident or a non-resident member?

A Yes.

Q Have you examined these cards to determine whether or not at one time, Mr. Rosenstiel was a resident member?

A Yes.

Q Would you tell us for what length of time Mr. Rosenstiel was a resident member?

A Well, he joined the Club in 1956 as a resident member, and he changed his status as of June 30, 1969.

Q Between 1956 and 1969, when you say he was a resident member, what did that mean according to the regu-

lations of the Club?

A Well, strictly it means, of course, that he pays higher dues. It gives him rights to vote in elections at the Club, being close to the club, you have more use for it.

Q Meaning he lived in New York?

A Yes, within a 50-mile limit.

Q And when was the first time that the Lotus Club was apprised by Mr. Rosenstiel that he wished to change his status from being a resident member, someone living within 50 miles of the Club, a non-resident status, meaning he lived more than 50 miles away from the club. What was the precise time that you learned that?

A Well, I am not aware really of the precise time. I know the last quarter we billed him, because we bill on a quarterly basis, for resident dues was March 31, 1969.

The next quarter, ending June 30, we billed him non-resident dues.

Q And did he pay resident dues from 1965 through the last quarter of 1969?

A Not--

Q Or the first quarter of 1969?

A Yes, right.

Q Do you know how Mr. Rosenstiel made known to your club his wish to you recognize that he lived more than 50 miles from the clubhouse and would pay the lower dues?

1 A No, I am not aware how he did it.

2 Q Could you tell us what was the differential between
3 those dues which were paid on an annual basis for members
4 who were resident as contrasted with those who were non-
5 resident?
6

7 A The resident dues are \$500.

8 Q And the non-resident?

9 A \$120.

10 Q The document which we have marked, these are
11 regularly kept in the club's--

12 A Yes.

13 Q --regular course of business, and it was the
14 regular course of the business of the club, is that cor-
15 rect?

16 A Yes.

17 Q Between 1965 and 1969, do you recall having seen
18 Mr. Rosenstiel at the club?

19 A Yes.

20 Q Did he use it frequently?

21 A No.

22 MR. NATHAN: Objection.

23 THE COURT: He said no, and I think--

24 MR. NATHAN: I didn't hear the answer, your Honor.

25 THE COURT: Yes, since the answer is no, do you

82a

CROSS EXAMINATION

BY MR. NATHAN:

Q Were you served with any requests for documents prior to--withdrawn.

What is the period covered by your subpoena?

A January 1st, 1965.

THE COURT: I am sorry, I couldn't hear you, say/

THE WITNESS: January 1st, 1965.

Q How far back do your records go?

A That's as far back as I could find them, October '65.

The records previous to that must have been destroyed.

Q Would you let my office know whether you have records further back?

A I checked.

Q Further back than October '65.

A I did, sir. When I received the subpoena.

Q In your last answer, you weren't sure of that fact?

A No, I am sure, we could not find any records previous to that point.

Q Do you know where those records are?

A They have been destroyed.

83a

Mr. Beck intends to bring the records with him or not is a matter that remains somewhat unclear, because he seems to be unclear as to what records he has. I do hope -- and I asked Mr. Beck yesterday that if he has records which are relevant to the issue, to bring them to him, but I do not know at this time whether he intends to produce any documentary evidence or to supply us with the same.

MR. NATHAN: Perhaps there could be some disclosure as to what the subpoena called for.

MR. RAMER: I can read it or supply counsel with a copy of the subpoena. In fact, there were two subpoenas involved, and if that will satisfy his questions I would be glad to supply him with that.

THE COURT: I suggest that that be done at the luncheon recess.

MR. RAMER: Fine.

MR. GRUTMAN: Now can we move along?

THE COURT: Yes, I would like very much for you to move along.

MR. GRUTMAN: Your Honor, I wish to offer at this time common exhibit or joint exhibit, what purports to be a conformed copy of an agreement entered into on the 20th day of March, 1968, between Lewis S. Rosensiel individually and the Glen Alden Corporation involving the sale of about

186
945,126 shares of Schenley stock which were sold at \$80 a share for a gross sale price of \$73,310,080.

THE COURT: I gather that since it is a joint exhibit there will be no objection, Mr. Nathan?

MR. NATHAN: That is correct.

THE COURT: How is that denominated?

MR. GRUTMAN: It is called IV-4.

THE COURT: All right, that is the way it will be marked in our record. That will follow Joint Exhibit IV-3 -- there being no objection.

(Joint Exhibit IV-4 received in evidence.)

THE COURT: Let the record reflect that Mrs. Rosenstiel has been recalled to the stand.

Mrs. Rosenstiel, you are continuing your testimony under the oath that was administered yesterday. Do you understand that?

THE WITNESS: I do, your Honor.

THE COURT: You may proceed, Mr. Grutman.

DIRECT EXAMINATION CONTINUED

BY MR. GRUTMAN:

Q Mrs. Rosenstiel, after the exchange between your husband and yourself on October the 18th, 1961, at about

85a

Q Was that for services rendered on your behalf?
A On my behalf.

THE COURT: Thank you.

MR. GRUTMAN: Yes, your Honor.

\$18,000, "Overrides of oil and gas from my

husband turned over to Nizer and Beck."

Q Were these interests in oil and gas leases that
you had?

A I was given gifts by my husband of overrides.

Q And did you turn those overrides, the proceeds
from them, over to the Nizer firm?

A Yes.

Q And they aggregated how much, Madam?

A At least 18,000.

MR. GRUTMAN: \$11,000, "Annulment trial witness,
trips to New York from Mexico, paid bill at Hotel Algonquin."

Now the next item says "\$182,000, kept permanent
support for bonds for vendor's action."

May I ask some questions.

Q In 1968 were you awarded \$96,000 a year in
permanent support from your husband?

A I was awarded in the Appellate Division in 1967
\$90,000.

Q And to whom was the \$96,000 paid?

A To Phillips, Nizer, Benjamin, Krim & Ballon.

Q Did they withhold some or any of those support

payments?

A They withheld every penny of the support payments.

Q Aggregating \$182,000?

A Yes.

Q Which you have not received from them.

A I have not received.

MR. GRUTMAN: The next item -- and it is the last item, your Honor -- is \$6,735, listed on this document, Plaintiff's Exhibit 5, as "Additional expenses."

Q Would you tell Judge Ward what those additional expenses encompass?

A It was for lunches for Mr. Nizer and Mr. Beck -- and dinners -- lunches and dinners.

Q Did you get a bill or invoice from them for this?

A I have never received a bill or an invoice from the Nizer firm, and I have been requesting it since 1967.

Q The various amounts that you paid over to them, who requested that you make the payments?

A Mr. Nizer.

Q Did you make the payments by check or by cash or in what form?

A I made some by check and some by cash.

87a

22 running from the date that Judge Hellman awarded it, ever
receive one penny from Mr. Nizer's office?

A I never received one penny from Mr. Nizer's office
till this day.

Q Were you advised that the Appellate Division had
increased the amount of permanent support above and beyond
that amount which Judge Hellman had fixed?

A Yes.

Q I assume that you were glad to hear of this?

A I was delighted.

Q And did Nizer's office report it to you?

A Yes, they were very gleeful.

Q Thereafter, did you learn from the Nizer office
of the success which they had in prevailing by upholding
that award, which the Appellate Division had made by the
affirmance which they obtained in 1967 in the month of
November?

A Yes.

Q Did they tell you that? Did you learn that when
the Court of Appeals affirmed Judge Hellman's order,
Mr. Rosenstiel had to make payments going all the way back
from the time Judge Hellman awarded it?

A Yes.

Q Did you ask them after November 1967, "where

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12
and without his pedigree please, whom your husband hired for this surveillance and security business?

A Lewis B. Nichols.

Q And to your knowledge is he still in your husband's employ?

A Yes.

Q You told us who you felt when the surveillance and the various other things were brought to bear upon you, and you described yesterday, in some detail for us, what has happened to your personal life.

Has your personal life continued to be, as you described it yesterday, from 1961 up to the present time?

A Yes.

Q Have you exhausted all of your personal wealth?

A I have.

Q In the defense of your interests in this matrimonial litigation?

A Yes.

Q Do you have any jewelry left?

A Not one. I don't even have a gold watch.

Q Do you have any money in the bank?

A Nothing.

Q Or have you been declared a bankrupt by this Court?

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11
A

I have been declared a bankrupt.

MR. GERTMAN: No further questions, your Honor.

THE COURT: We will suspend now. It is 1:20.
will resume at 2:30.

(Luncheon recess.)

1 mkpl

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2 A F T E R N O O N S E S S I O N

3 2:30 P.M.

4 MR. GRUTMAN: Your Honor, I found that in the
5 record, in Mr. Javits' testimony. It appears at page 2600
6 and something -- and it is not too long. So if I could have
7 the Court's permission this evening to take the three volumes
8 of the transcript, which are back there (indicating) -- it
9 appears in three different parts -- I will have probably
10 maybe 40 or 50 pages for your Honor to review, and that
11 will be the kernel of the part that I want your Honor to
12 take notice of.

13 MR. NATHAN: I thought the arrangement we
14 discussed was that if Mr. Grutman would find something
15 that was relevant he will put some marker in it with the
16 page reference so that it could be presented to Court and
17 counsel, and all the Court would have to read is the 40 or
18 50 pages and try to figure out what Mr. Grutman's point is.

19 MR. GRUTMAN: Mr. Nathan, this is not a charade.
20 You have read this record, you know precisely what it is
21 about. I have found the needle. You have been through it,
22 and I will tell you the pages in advance, and you can make
23 objections if you want to.

24 THE COURT: Don't address each other.

25 MR. GRUTMAN: I am sorry, your Honor.

2 (Question read by the reporter.)

3 THE COURT: Just answer "Yes" or "No."

4 A Yes.

5 Q And how many trials have you told a lie under
6 oath?

7 A Once.

8 Q Are you referring to your affidavit in the case
9 against you by Doctors Hospital?

10 A No.

11 Q Are you referring to -- which case are you refer-
12 ring to?

13 MR. GRUTMAN: I object to that, your Honor.

14 THE COURT: Yes, yes, sustained.

15 Q Have you ever been convicted of the crime of
16 perjury?

17 A Yes.

18 Q Will you state the circumstances?

19 A I was in a civil court pretrial where a friend of
20 my husband's raised a check of mine from 1100 to \$11,000,
21 and I was on pretrial with my former attorney, Mr. Olick,
22 and Mr. Hartman raised my check from 1100 to \$11,000, and
23 the Bankers Trust certified it.

24 Mr. Olick sued the Bankers Trust, and they
25 brought Mr. Hartman as a third party.

2 A I closed it in '71.

3 Q What month?

4 A I really don't remember. I would have to look it
5 up.

6 Q How do you conduct your banking arrangements now?

7 A I am at the pity of my husband who sends me the
8 permanent support check.

9 Q What is the amount of the permanent support
10 checks?

11 A 5,650, and it always comes late.

12 Q And what do you do --

13 THE COURT: I am sorry, that is \$5,650 per month?

14 THE WITNESS: Yes, your Honor. It used to be
15 2000.

16 Q You cash that check upon its receipt?

17 A Yes.

18 Q And you disburse -- you pay your bills in cash
19 from the proceeds?

20 A I deposit the check with the hotel and I pay the
21 proceeds.

22 Q Have you had occasion to draw checks on any
23 bank since you closed your bank?

24 A No.

25 Q Have you drawn any checks on the defendant --

1 kp9

S.Rosenstiel-cross

502

2 house?

3 A I would say it was some time -- I cannot give you
4 the date -- some time in 1962.

5 Q So that for how long a period of time did you
6 remain indoors without seeing -- without experiencing sun-
7 light and fresh air?

8 A Well, there were six men sitting in three --

9 Q No, just the time.

10 A Approximately, I'd say, about five or six months.

11 Q And was that pursuant to instructions from any-
12 body?

13 A Yes.

14 Q From whom?

15 A From Mr. Nizer.

16 Q And did Mr. Nizer tell you the reason why you
17 should remain in your house? Yes or no.

18 A Yes.

19 MR. GRUTMAN: You may ask the next question.

20 I will not object.

21 Q What did Mr. Nizer say to you?

22 A Mr. Nizer said to me if I left the house the six
23 men sitting outside, that I would never be able to get back
24 as my husband would lock me out.

25 Q Now, after you left that house where did you move

1 kp10

S. Rosenstiel-cross

503

2 to?

3 A The Regency Hotel

4 Q What was the date that you moved to the Regency
5 Hotel?

6 A I just testified, approximately July 27, 1963.

7 Q Do you recall what your rent was in the Regency
8 Hotel?

9 A I think it was about 13 or 14 hundred a month.

10 Q And thereafter -- how long did you stay at
11 the Regency Hotel?

12 A Until May of 1969.

13 Q Did you rent increase during that period?

14 A Yes.

15 Q What were you paying at the time you left the
16 Regency?

17 A Well, they raised the rent about 10 per cent
18 every year.

19 Q Could you just give us the last figure.

20 A It was approximately 2500 a month.

21 Q And where did you move to from the Regency?

22 A The Waldorf Towers.

23 Q What was your rent at the Waldorf Towers?

24 A It was about the same amount.

25 Q 2500 a month?

stand in your way.

Q Isn't it true that your husband is still required to pay \$96,000 pursuant to that alimony judgment?

A Yes, he is paying part of it to himself. My husband had me pay for my own furniture, objects of art and paintings from my former husband.

MR. NATHAN: I ask for a yes or no answer.

Q So that I believe you testified that the defendant's obligation to pay the \$96,000 has not been changed, isn't that correct?

A No, it can't be changed. It is a permanent award.

Q Isn't it a fact that there were a number of judgments entered against you including one by your husband?

A Yes.

Q And pursuant to --

A Which was falsely --

THE COURT: Please.

THE WITNESS: I am sorry, your Honor.

Q And that pursuant to those judgments certain amounts were being paid to the judgment debtors prior to your bankruptcy, isn't that correct?

A Yes.

THE COURT: Do you mean judgment creditors?

MR. NATHAN: I am sorry, judgment creditors.

Q Judgment creditors, prior to your bankruptcy?

A Yes.

Q And that was all pursuant to court orders?

A Yes.

Q And that after your bankruptcy, instead of paying those monies to the judgment creditors, the withholdings were put into an escrow account, isn't that correct?

A I imagine so.

Q Isn't that what the provision -- isn't that what the provision of the Bankruptcy Court was?

MR. SCHORENSTEIN: If she knows, your Honor.

A I really don't know, but I imagine it's right.

Q So that the testimony to which His Honor was referring earlier this morning was as to the amounts that you are receiving net after these deductions, isn't that correct?

A Yes.

Q And what is that amount, just so the record will be clear at this point?

A \$5,650.00.

Q And has there been an order recently which has increased that amount?

A Before I received the six fifty I was receiving only five thousand.

THE COURT: When was the increase from \$5,000 to \$5,650?

THE WITNESS: The referee increased it to \$5,650.00.

THE COURT: That was Referee Aza Herzog?

THE WITNESS: Yes.

THE COURT: Was that some time this year?

THE WITNESS: Yes. This has just been for the last two months that he increased it.

MR. NATHAN: Your Honor, I have been advised that Mr. Vassallo has completed his examination of the records that were brought to this court by two attorneys.

MR. GRUTMAN: We want to put them on. Please finish with Mrs. Rosenstiel.

MR. VASSALLO: I thought we could save these attorneys a trip back, your Honor.

MR. GRUTMAN: Sorry. Thank you.

THE COURT: I think that if both sides were prepared to stipulate, I would accept. It appears you are not. I would like to conclude the cross examination of this witness. You may proceed, Mr. Nathan.

MR. NATHAN: Thank you, your Honor.

MR. SCHOKENSTEIN: Your Honor, might I note the appearance of Judge Shapiro in the courtroom. He is not

2 Century Country Club

3 A There are regular membership, special membership,
4 non-resident membership and then certain classes which
5 relate to women.

6 Q To qualify as a non-resident member, how far away
7 from the club do you have to live?

8 A There are two qualifications: You must -- you are
9 not permitted to have a residence or a permanent place of
10 business in the New York Metropolitan area.

11 Q All right. I show you a letter which I will first
12 ask to have marked as an exhibit.

13 (Plaintiff's Exhibit 9 marked for identification.)

14 THE COURT: Would you read the last answer back?

15 (Answer read.)

16 Q I show you this document, which has been marked
17 Plaintiff's Exhibit 9 for identification, which appears
18 on the letterhead of Lewis Rosenstiel. Is that document,
19 marked Plaintiff's Exhibit 9, a photocopy of the
20 document which is regularly kept in the files of the
21 Century Country Club?

22 A Yes, it is.

23 Q Was there a request by Mr. Rosenstiel, prior
24 to 1969, to change his membership status from resident to
25 some non-resident status?

1 hsg 6

Polikoff-direct

570

2 A I have no knowledge of that either way.

3 Q Is that letter, which I have shown to you, a
4 request on behalf of Mr. Rosenstiel to change his status
5 to non-resident?

6 A It is.

7 Q Was that letter received from Mr. Rosenstiel
8 in 1969?

9 A Yes, it was.

10 Q Have you found any earlier request from
11 Mr. Rosenstiel to change his status from resident to
12 non-resident prior to this 1969 letter?

13 A No.

14 Q Did the Century Country Club grant Mr.
15 Rosenstiel's request to change his status of membership
16 from resident to non-resident?

17 A No.

18 MR. GRUTMAN: I offer the letter in evidence.

19 MR. NATHAN: May we see it?

20 No objection.

21 THE COURT: Received.

22 (Plaintiff's Exhibit 9 received in evidence.)

23

24

25

rldp6

Polikoff-direct

THE COURT: Overruled.

There is no question, Mr. Vassallo, as to the authenticity?

MR. VASSALLO: None, your Honor, nor to the fact that they are reproduced copies.

THE COURT: Right.

(Plaintiff's Exhibit 10 received in evidence.)

MR. GRUTMAN: Your Honor, before they are handed up to you could I have those exhibits for one moment?

THE COURT: Yes, of course.

(The clerk hands to Mr. Grutman.)

MR. GRUTMAN: If your Honor please, I would like the record to reflect that these 76 pages, beginning with an invoice commencing January 1 of 1967 through April 30 of 1973 are addressed for Mr. Rosenstiel's account to various places.

Beginning in January, 1967, to an address in Jersey City.

September of 1970, at 17 East 49th Street, and that is not until the month of June, 1972, that the first bill, the first invoice is ever sent to 1350 West 29th Street, Miami Beach.

THE COURT: Let's find out later in the case.

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2 MR. GRUTMAN: Certainly (handing).

3 Q You testified on direct examination about the
4 qualifications for non-resident membership. Would you
5 repeat that for me, please?

6 THE COURT: I really do not think it is necessary.
7 I have it. I asked that it be repeated.

8 MR. VASSALLO: I beg your pardon, your Honor.

9 THE COURT: Is there anything, Mr. Witness,
10 beyond the qualification for non-resident members being
11 non-residents or permanent place of business in the New York
12 metropolitan area?

13 THE WITNESS: Permanent -- I should have said
14 "principal place of business." You must first be a member.
15 You cannot join Century Country Club as a non-resident.
16 You must be a member who moves away from the City. Other
17 than that, it is correct.

18 Q And so far as the qualifications are concerned,
19 when you refer to having a residence within that area, it
20 is immaterial, is it not, under the regulations governing
21 that classification whether the residence in question be
22 a principal residence or a secondary residence?

23 A Correct.

24 MR. VASSALLO: May I have the letter which was
25 offered, Mr. Grutman?

Q When did that period of time end?

A In 1967.

Q Do you have the date?

A Well, if I can look at the records.

Q You may look at the records if you are satisfied that the records are accurate.

A Right.

(After examining) March 3, 1967, he was removed.

Q Was that as a result of some action that was taken?

A Yes, sir. He sent us a personal letter asking that his name be removed from the list of the Town of Greenwich because his permanent residence has been Miami Beach, Florida, for a number of years.

Q I show you a document which has been marked by counsel as Exhibit II-27 --

MR. NATHAN: And I advise the Court that there was an objection as to authenticity.

Q (Continuing) I show you that document and ask you whether you know what that is (handing).

A This is a copy of the letter that we have on file in the registrar of voters office.

Q Is the original of the letter on file a record kept in the regular course of business of your office?

A Yes, sir. It is kept in the communication file.

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1 a chance --

2
3 MR. GRUTMAN: Yes, sir.

4 THE COURT: -- to study the memorandum which was
5 presented at the outset of this morning's presentation.

6 MR. GRUTMAN: I think your Honor is quite wise
7 in that, and I go along with it.

8 (Joint Exhibit II-27 received in
9 evidence.)

10 BY MR. NATHAN:

11 Q Have you searched the records of your office to
12 determine in which years Lewis S. Rosenstiel voted?

13 A Yes, sir.

14 Q Will you tell the Court the years in which he
15 voted?

16 A Mr. Rosenstiel voted in 1938, 1940, 1946; and
17 then by absentee he voted in 1948, 1950 and 1952.

18 Q By "absentee" do you mean he voted through an
19 absentee ballot?

20 A That is right, through the mail.

21 Q Do your records show the address that Mr. Rosen-
22 stiel was registered from in 1937?

23 A Yes, sir.

24 Q What was that address?

25 A North Street, Conyers Farm.

1 kp

Carretta-direct

719

2 Q Now calling your attention particularly to the
3 years 1964, '65 and '66, do you have any records which show
4 affirmatively that he did not vote in those years?

5 A Yes. The system that is utilized in the
6 registrar's office is that the registrars almost immediately
7 after an election or primary will see to it that these
8 individual voting cards are brought up to date. In other
9 words, a person who participates as a voter will be marked,
10 and the date of their participation will be put on the
11 card. If there is no date on the card then we put a comma
12 on the card which indicates that the voter did not participate
13 in those years.

14 MR. GRUTMAN: "Comment" or "comma"?

15 THE WITNESS: Comma.

16 Q And your testimony is based in part on that
17 record?

18 A Yes, sir.

19 Q And have you also caused an investigation to be
20 made as to whether Mr. Rosenstiel voted in Connecticut at
21 any time after the receipt of the exhibit which has just been
22 marked in evidence?

23 A Did you ask, did I investigate?

24 Q Yes.

25 A Yes, I have, and I have with me the registry

1	kp	Carretta-direct	720
---	----	-----------------	-----

2 list of the years, '68, '69, '70, '71 and '72, and in those
3 registry lists his name does not appear.

4 Q Now I show you a group of documents which has
5 been marked by counsel as II-28, and I ask you what these
6 records are which have been certified (handing)?

7 A (After examining) These are photostatic copies
8 of our old registry list which happens to be 1965.

9 Q "64 --

10 A '64, '65, '66 -- right.

11 These are the photostatic copies of part of our
12 registry list in those years.

13 Q And are those photostatic copies authenticated
14 by somebody?

15 A Yes, the town clerk, he has a seal and a signature
16 on it.

17 MR. NATHAN: Your Honor, we have exhibited these
18 to counsel. Perhaps there is a stipulation, to avoid
19 cluttering up the record; otherwise I would like to offer
20 these.

21 THE COURT: And what stipulation do you propose?

22 It may well be that Mr. Grutman will be agreeable.

23 MR. NATHAN: The stipulation is that the defendant
24 did not vote in Greenwich in the years 1964, 1965 and 1966.

25 MR. GRUTMAN: Mr. Remer will respond.

THE COURT: That is my understanding of what the records show, and that's the totality of it, as I understand it, Mr. Nathan.

MR. NATHAN: That's correct.

MR. GRUTMAN: Okay, if that's what the records show and if that's what the man says, I don't see any point in disputing it.

MR. NATHAN: Do we have a stipulation?

THE COURT: It is so stipulated?

MR. GRUTMAN: That he did not in Greenwich, Connecticut in the years in which this register stated?

MR. NATHAN: Namely, '64, '65, '66.

Q Is that correct?

A Yes.

MR. GRUTMAN: Very well, no reason to dispute that.

THE COURT: It is stipulated. Then are you going to withdraw the offer?

MR. NATHAN: Withdrawn.

Q One further question, did you happen to check as to whether a person under the name of Susan Rosenstiel ever was registered from this district?

A Yes, I personally checked that myself this week and at no time did we come across the name of Susan Rosen-

is that I reviewed it, and having reviewed it, called Mr. Marx about certain minor corrections, which I thought professionally should be made, this had to do not with the economic of course, or with the phraseology, the legal phraseology of the agreement, and my recollection is we had no problem at all about that, and I then got another draft of the agreement incorporating the agreed upon changes, and then called the then Susan Kaufmann to come to my office.

Q Did she come to your office?

A She did.

Q Would you tell what happened when she came to your office?

A Generally we reviewed the agreement. We discussed the agreement.

Q Was anybody present when you discussed it with her?

A I have no present recollection of anyone being in the room at the time that we discussed it.

Q Do you recall how long you conferred with Mrs. Kaufmann, as she was then known, about this agreement?

A My best recollection would be anywhere from one hour to two hours.

Q Do you recall any specific conversation?

A No, I don't recall any of the specific things we discussed.

1 mee 7

Florea - direct

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2 Q Now, I show you Joint Exhibit IV-1, and I asked
3 you whether you can identify that exhibit which is already
4 in evidence?

5 A I am sorry, I should like to correct some of my
6 testimony. I said, in response to your question, do I
7 remember any of the specifics of the conversation--we discussed
8 this at lunch, you having provided me with a copy of the
9 agreement.

10 MR. GRUTMAN: Who is the "we", Mr. Florea?

11 THE WITNESS: This gentleman.

12 Q Nathan is my name.

13 A Mr. Nathan and I, and Mr. Nathan having furnished
14 me with a copy of this agreement yesterday, I think, and
15 when I looked at it, I did, of course, recognize my signa-
16 ture, so for the purpose of identifying this document as
17 to whether or not it refreshes my recollection, I can say
18 only that the signature appearing as a witness is mine.

19 Secondly, the figures which appear on page 2,
20 which was the nature of our discussion at lunch, appear to
21 be in my handwriting, and I do recall a discussion--this,
22 having read this, refreshed my recollection that I had a dis-
23 cussion with Susan Kaufmann as to the figure to be inserted
24 at this point on page 2, which when delivered to me was a
25 blank space, and it is subparagraph D, and it says "Second

2 part," being Susan then Kaufmann, "owns property in her own
3 right, having a present market value in excess of --"
4 It was then blank, with a semi-colon, and I said that we
5 would have to put it in, and we discussed--this refreshes
6 my recollection that we discussed what her property was, and
7 generally she estimated the value of the property, having
8 described briefly what it was, at \$400,000, and I inserted
9 the figure, the figure appearing on page 2 in paragraph D
10 would appear to be my figures, my handwriting.

11 Q Now, when you say that you inserted those figures,
12 did you insert them on the first draft that was sent to you
13 by Mr. Marx or on the revised draft that was sent to you by
14 Mr. Marx?

15 A The first draft I had not yet discussed it with
16 Susan Kaufmann, so I would say, not from vivid recollection,
17 but I would say I did not, because not having discussed it
18 with Susan Kaufman I would not have been able to.

19 Q Now, do you see any other handwritten material on
20 that agreement other than the signatures?

21 A I see some handwritten insertions on page 5 and
22 some similar interdelineations on page 6, and that would be
23 it, other than the signatures to the agreement.

24 Q Do you recall when the interdelineations on page
25 5 were made?

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2 A My recollection is that they were made at the
3 time of the signing.

4 Q Do you recognize the handwriting from that Xerox
5 copy?

6 A No, I do not.

7 Q The same question with respect to page 6?

8 A Same answer.

9 Q Now, have you--withdrawn.

10 Do you recall anything else that happened at the
11 meeting between you and Susan Kaufmann to discuss the
12 section version of the pre-nuptial agreement?

13 A Well, Mr. Nathan, when we speak of the second
14 version, it is my recollection, Susan Rosenstiel now, did
15 not see the first.

16 Q I understand. I am speaking of the copy--

17 A The exhibit which is in evidence here?

18 Q Yes.

19 A No, I recall nothing other than what I have
20 already described.

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2 Q Do you recall when you saw Mrs. Kaufmann again
3 in connection with this matter?

4 A At the time of the execution of the agreement.

5 Q Can you determine the date of execution by
6 reference to the exhibits?

7 A (After examining) Only by what the exhibit itself
8 says. It says November 29, 1956.

9 I have no independent recollection other than by
10 looking at this.

11 Q Were you present at the time of the execution?

12 A I was.

13 Q Will you tell us who was there at the time of
14 the execution?

15 A My best recollection is that there were Mrs.
16 Rosenstiel, Lewis Rosenstiel, Mr. Marx, another gentleman
17 whose name at the moment -- I don't know as I ever knew it
18 than but it was someone who was introduced to me -- I recall
19 there was another gentleman there, and I.

20 Q Now when you and the parties were together -
21 skip the pleasantries and tell us about the ceremony of
22 execution of that document? What happened in connection
23 with the preparation and signing of that document on
24 the 29th of November, 1956?

25 A Well, I have no positive recollection of anything

2 that was said or anything that was done other than a com-
3 parison of the document which I had reviewed in my office
4 with the one which was being executed to make sure they
5 were identical.

6 Q Did you bring a counterpart of that exhibit to
7 the place where it was executed?

8 A I brought with me the one that I had in my
9 possession, which was delivered to me by Marx.

10 Q Do you recall where the execution took place?

11 A In Mr. Rosenstiel's offices, as I recall it.

12 Q Now after -- did you say that you had flipped
13 the pages to compare your copy with another copy, or did
14 somebody else do that?

15 A I did not say I flipped the pages, Mr. Nathan.
16 I had compared the copy which I had brought with me --
17 that is my best recollection. I compared the copy which
18 was brought to my office to make certain that the document
19 that was about to be executed by my client was in all respects
20 identical to the one that I had reviewed.

21 Q Then what happened?

22 A Then the agreements were signed by the parties
23 and witnessed by the parties' respective attorneys.

24 Q Now you have mentioned that there was some
25 interlineation on page 5 and some interlineation on page 6.

2 When was that done? Take 5 first.

3 A Well both of them were done at the same time.
4 My best recollection is that they were done at the time of
5 execution of the agreement.

6 Q Do you recall any conversation in connection
7 with either interlineation?

8 A Very vaguely. There was some conversation --
9 and all of this on Mr. Rosenstiel's part -- about his wanting
10 for some reason, which I recall only vaguely, to insert as
11 one of -- what was it, the trustees of the trust which was
12 to be set up -- the name of his -- I believe son-in-law.
13 He felt that there would be bad feelings or something if the
14 name were not put in, and this is the best recollection I
15 have of the reason why these names were put in. I believe
16 it was a son-in-law of his.

17 Q Was there any conversation about the other inter-
18 lineation?

19 A Well, the other interlineation, as I see -- they
20 are both the name of Sidney E. Frank which was inserted,
21 as I read that -- and it is only as I read it that I recall
22 the circumstances of the interlineation and the approximate
23 conversation which took place at that time.

24 Q How long did the ceremony of execution last from
25 the time that the pleasantries were over and the actual legal

2 work began until the signing was completed?

3 A I'd say 20 minutes to a half-hour.

4 Q Was any other business or services conducted by
5 you on that day?

6 A None that I recall.

7 Q When did you next see the plaintiff?

8 A Shortly thereafter. I don't recall whether it
9 was on the same day or the next day. My best recollection
10 is it was on the following day.

11 Q What happened the next time you saw her?

12 A I was a witness at the marriage ceremony between
13 Mrs. Rosenstiel and her -- and Mr. Lewis Rosenstiel.

14 Q Do you recall whether you played any role in
15 scheduling that marriage ceremony?

16 A My recollection is -- and I am not certain about
17 it, but my recollection is that I called the then City
18 Clerk to arrange for the issuing of the license expeditiously
19 and I believe that I spoke to Judge Streit who was there-
20 after to perform the wedding services.

21 Q Did there come a time when the matter of your
22 fee for services came up?

23 A It did.

24 Q When was that first discussed?

25 A Some time after the events which I have just

2 described. How long thereafter I do not recall.

3 Q With whom did you discuss your fee?

4 A Susan Rosenstiel.

5 Q What did she say?

6 A I have no clear recollection of what precisely
7 was said. We simply discussed and agreed upon a fee.

8 Q What amount did you agree upon?

9 A My recollection is -- and it has since been
10 refreshed -- is that it was \$1000.

11 Q And did you agree as to who was to pay that fee?

12 A I don't recall whether I agreed then as to who
13 was to pay it. I think we simply agreed upon a fee -- not
14 who was to pay it at that moment.

15 Q Do you recall to whom you sent the bill?

16 A I think I sent the bill to -- well, she was then
17 Susan Rosenstiel.

18 Q Who paid the bill, if anybody?

19 A My present recollection is that Mr. Rosenstiel
20 paid it, but I am not certain about that.

21 Q Did you receive any other payment or thing of
22 value in connection with your legal services?

23 A In connection with my legal services?

24 Q Yes.

25 A No.

2 Q Is there a single building or is there a complex
3 of buildings at or about the same place as the residence?

4 A There are many buildings on the farm.

5 Q Are they all located in one state?

6 A No.

7 Q What buildings are located in the New York por-
8 tion?

9 A Several farm buildings in the New York portion as
10 well as a boathouse on the lake.

11 Q Now, in whose name is all of that property held,
12 if it is all held in the same name?

13 A At what time?

14 Q Well, beginning at--let's just take the period
15 1964 to date?

16 A Well, the Connecticut property from '64 to about
17 1970, half of that was in Mr. Rosenstiel's name. The Con-
18 necticut portion. The other half was in the name of the
19 trust, as well as in the name of some of his grandchildren.

20 Q Now, with respect to the half that was in his
21 name in 1970, in what name is it now?

22 A It is currently in the name of a trust.

23 Q And what about the New York property?

24 A The New York property from 1964 to about 1970 was
25 half in his name and then from about 1970 on, his half was

1 mee 15 Roberts - direct 885

2 Q And do you recall when he disposed of it?

3 A Early 1968.

4 Q Do you know the address?

5 A Five East 80th Street.

6 Q Now, does the defendant own any real property in
7 New York City at the present time?

8 A No.

9 Q Does the defendant have a home in any other place?

10 A When?

11 Q At the present time?

12 A Yes.

13 Q Where?

14 A Miami Beach, Florida.

15 Q When did he acquire that property?

16 A In 1954.

17 Q And would you give the address of that property?

18 A 1350 West 29th Street, Miami Beach, Florida.

19 Q Did he acquire that property in his own name?

20 A Yes.

21 Q Does he still use that property?

22 A Yes.

23 Q Is it in his name now?

24 A Not entirely.

25 Q What portion of that property is now in his name?

1 mee 16 Roberts - direct 886

2 A One half.

3 Q What was the defendant's occupation in 1964?

4 A He was Chairman of the Board of Schenley Indus-

5 tries.

6 Q How long did he continue to hold that position?

7 A Until approximately November 1968.

8 Q At that time did he retire?

9 A Yes.

10 Q During the period 1964 through the date of his

11 retirement, where was his main Schenley office?

12 The headquarters of the Schenley offices is 1290

13 Avenue of the Americas.

14 Q During that entire period, 1964 through 1968?

15 A Right.

16 Q And he had his executive suite in those offices?

17 A Yes.

18 THE COURT: It was 12--

19 THE WITNESS: 1290 Avenue of the Americas.

20 THE COURT: There was some testimony that the

21 Schenley offices at one time were located in the Empire

22 State Building.

23 Could you tell us when that was?

24 THE WITNESS: Well, that was--I don't know when

25 they moved in--it may have been around 1940, and they moved

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2 out, I am not sure, '59 or '60.

3 Q Where there any other Schenley Offices which the
4 defendant used in the period 1964 through 1968?

5 A Well, I know he used the office at Miami Beach,
6 and he may have used other offices throughout the country
7 when he traveled around.

8 I don't know all the places where Schenley had
9 offices.

10 Q Would you describe the Schenley office in Miami
11 Beach during the period 1964 through 1968?

12 A Well, it was--it occupied maybe 8,000 to 10,000
13 square feet, something like that at 1900 Purdy Avenue.

14 Q How far is 1900 Purdy Avenue from his Florida
15 home?

16 A A few miles, a mile or two or three.

17 Q Did he also have a place where he conducted
18 Schenley business, a Schenley office in Connecticut, during
19 the period 1964 through 1968?

20 A Yes.

21 Q Where was that?

22 A On Colliers Farm.

23 Q Is that a separate building?

24 A Yes.

25 Q Were the expenses of that building paid for by

1 mee Roberts - direct 888

2 Schenley largely?

3 A Yes.

4 Q Did he conduct his business at any other places
5 during the period 1964 through 1968 when he was employed
6 by Schenley?

7 A Yes.

8 Q Where?

9 A He conducted the business wherever he happened to
10 be.

11 Q How did he manage to do that?

12 A Well, he always carried a--he always had a retinue
13 of Schenley employees with him, wherever he went.

14 Q Did he carry records with him wherever he went?

15 A He carried records--yes.

16 Q How did you communicate with the defendant in the
17 period 1964 through 1968?

18 A By telephone, by correspondence, and by meetings.

19 Q Did you receive instructions from the defendant
20 during this period?

21 A Yes.

22 Q And did you receive them from him directly as well
23 as from members of his staff?

24 A Yes.

25 Q How often did you communicate with the defendant

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2 personally?

3 A Well, that would vary. It could be 15 or 20 times
4 in one day or not for two or three weeks at a time.

5 Q Was that during the whole period 1964 through
6 1968?

7 A Yes.

8 Q And how frequently were the communications between
9 you and members of his staff?

10 A Daily.

11 Q During the same period?

12 A Yes.

13 Q Did there come a time when you received instruc-
14 tions from the defendant, directly or indirectly, in connec-
15 tion with moving property to Florida?

16 MR. GRUTMAN: Your Honor, I am going to object
17 to all testimony from this witness as to alleged declara-
18 tions of intention of animus manendi in some domicile other
19 than Connecticut on the grounds that it would be hearsay
20 from him.

21 MR. NATHAN: Your Honor, we have submitted a memo-
22 randum of law last week on this very question. The burden
23 of the memorandum is that the statements of a party as to
24 his domicile, although hearsay as to the truth of the state-
25 ments, are admissible to show his intent and state of mind.

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2 MR. GRUTMAN: My objection is on the basis that
3 I understand that they are being offered for their truth.

4 MR. NATHAN: With respect to--I haven't asked
5 the question as to any statement of any declaration of domi-
6 cile at this point and I think that the objection is prema-
7 ture.

8 MR. GRUTMAN: Well, we are not at the nail, we are
9 at the cuticle and that's why I am rising to make the objec-
10 tion.

11 MR. NATHAN: If I may make an offer of proof, we
12 are now at the point not of the cuticle but of bringing out
13 the facts as to what was done in the year 1965, and what was
14 done will speak for itself.

15 I am now trying to--I will withdraw that. That's
16 my statement, your Honor.

17 THE COURT: Objection is overruled. I certainly
18 expect that we are going to get to this point very soon.
19 I would hear you at that time, Mr. Grutman, and I might ask
20 now, in view of the fact that both the Court and you have
21 had the memorandum for several days, whether you have
22 prepared any responsive memorandum to the one which is
23 entitled "Defendant's Memorandum of Law on Admissibility of
24 Defendant's Oral and Written Declarations of Domicile."

25 MR. GRUTMAN: I have no written memorandum in

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2 response to it. I am prepared however to submit my spoken
3 position as to the authorities.

4 THE COURT: The Court has read the memorandum which
5 has been submitted to it and has done some independent re-
6 search on the subject and in general terms would agree with
7 the statement that declarations of intention are admissi-
8 ble as an exception to the hearsay rule when the intention
9 related to matters of domicile.

10 So that's a general observation at this time. But
11 I certainly would hear from you when we get to the specific
12 question.

13 MR. GRUTMAN: Yes, your Honor.

14 THE COURT: Mrs. Edmondson, would you read back the
15 last unanswered question.

16 (Question read.)

17 A Yes.

18 Q When did you receive such instructions?

19 A At the end of 1964.

20 Q And what did you do as a result of these instruc-
21 tions?

22 A I moved my office from Greenwich, Connecticut. I
23 closed the defendant's vault in Connecticut, removed the
24 contents thereof, and I closed most of the Connecticut bank
25 accounts with the exception of two small farm accounts.

1 mee

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2 MR. NATHAN: Would you say a little bit more about
3 the two small farm accounts? What where they used for?

4 A They were used to pay expenses in the operation of
5 the farm, payroll and maintenance expenses.

6 Q Now, what did you do with the money that was in
7 the Connecticut accounts which you closed?

8 A I closed those accounts and opened similar accounts
9 in Miami Beach, Florida.

10 Q And what did you do with respect to the contents
11 of the safe deposit box in Connecticut?

12 A I ultimately removed all the contents from that
13 box and placed them in Miami Beach, Florida.

14 Q How long did it take you to accomplish the movement
15 of the securities that had been located in Connecticut?

16 A Seven or eight months.

17 Q Would you describe the types of securities in-
18 volved?

19 A Well, there were listed securities, unlisted
20 securities.

21 Q When you got through carrying out these instruc-
22 tions, were there any listed or unlisted securities remain-
23 ing in the State of Connecticut?

24 A No.

25 Q Where were all of the defendant's listed and un-

1 mee Roberts - direct 893

2 listed securities? I take it we are talking about stocks
3 and bonds?

4 A Right, marketable securities.

5 MR. GRUTMAN: What's that, I didn't hear that?

6 THE WITNESS: Marketable securities.

7 MR. GRUTMAN: Thank you.

8 Q During the period 1965, after the move was com-
9 pleted, were all of the defendant's securities in Florida?

10 A Practically all.

11 Q Where were the securities that were not in
12 Florida?

13 A In my office.

14 Q In Jersey City?

15 A Correct.

16 Q Can you characterize the securities that were in
17 your office after the move had been completed?

18 A Well, those securities were stock dividends he
19 may have received or securities that we bought or sold.
20 and it was used as a transaction location.

21 Q Where were the brokers which Mr. Rosenstiel was
22 using in 1965 located?

23 A Mostly in New York.

24 Q Do you recall which brokers he was using in 1965?

25 A I'd have to refresh my memory. I know the names
of some of his brokers. I just don't remember if he had

1 mee Roberts - direct

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2 activity with them in 1965.

3 Q Taking the whole period of 1964 through 1968, where
4 were his principal brokers located?

5 A In New York.

6 Q Did he have brokers in other communities?

7 A Yes.

8 Q What other communities?

9 A London, Cincinnati.

10 Q I ask that some documents be marked for identi-
11 fication.

12 THE COURT: Are these defendant's exhibits or joint
13 exhibits?

14 MR. NATHAN: They are labeled joint exhibits,
15 your Honor, but as I indicated before this does not mean
16 that the plaintiff has agreed as to their admissibility.

17 MR. GRUTMAN: They are only as to designation and
18 numerology but not as to any agreement that we made about
19 admissibility.

20 THE COURT: Why don't we then start, if there are
21 not too many of them, with the letter L which seems to be
22 the next exhibit?

23 MR. NATHAN: Your Honor, I think what I was about
24 to say was that Mr. Grutman and I believe the Court agreed
25 at the beginning of the trial for the convenience of the

1 rp Roberts-direct 910

2 evidence the closing out of four accounts to which they
3 relate?

4 A Yes.

5 Q Is the final entry at the bottom of each series
6 of documents a zero balance?

7 THE COURT: They speak for themselves and I don't
8 find any where there is anything other than a zero at the
9 footnote. I will accept the fact that these particular
10 accounts were closed on the dates indicated on the state-
11 ments.

12 MR. NATHAN: I mark as Joint Exhibit II-9 what
13 purports to be a Xerox copy of a safe-deposit lease cov ring
14 a one-year period beginning May 7, 1965, at the First
15 National Bank of Miami, bearing a signature appearing to
16 be that of Mr. Rosenstiel.

17 (Joint Exhibit II-9 marked for
18 identification.)

19 THE COURT: Show it to Mr. Grutman directly.

20 MR. NATHAN: I better ask the witness.

21 Q Is this document from your files or a document
22 you received from the bank?

23 A I don't recall.

24 Q Do you recognize the signature on the document?

25 A Yes.

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2 Q Is that the signature of Mr. Rosenstiel, the
3 defendant?

4 A Yes.

5 VOIR DIRE EXAMINATION

6 BY MR. GRUTMAN:

7 Q Mr. Roberts, is that the same bank, the First
8 National Bank of Miami, with whom the bank accounts were
9 opened?

10 A Yes.

11 Q Is that a bank in which Mr. Rosenstiel has a
12 proprietary interest?

13 A No.

14 Q You are not certain whether this document was
15 regularly kept in the course of your business, is that
16 correct?

17 A I don't.

18 Q You are not sure?

19 A I just don't recall.

20 MR. GRUTMAN: If he can't say the document was
21 regularly kept in the course --

22 THE WITNESS: I didn't say that. I said I didn't
23 know whether it emanated from me or the bank. But if it
24 emanated from me, it would have been kept in the normal
25 course of business.

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2 Q And if it emanated from the bank, then it came to
3 Mr. Nathan?

4 MR. NATHAN: I withdraw it.

5 MR. GRUTMAN: Your Honor, I don't want to be
6 captious.

7 THE COURT: I will check the document and if it
8 would have been a record made and kept in the regular course
9 of business by the bank, I know you will not require someone
10 to come from Florida to make that brief identification.
11 Let me look at it.

12 Q Mr. Roberts, did you know whether the safe-
13 deposit box rental referred to in the Xerox copy refers
14 to a box which was opened on or about the day that appears
15 on that lease agreement?

16 A Yes.

17 Q Was that done under your supervision?

18 A Yes.

19 THE COURT: Received.

20 (Joint Exhibit II-9 for identification
21 received in evidence.)

22 THE COURT: Could I see the letter signed by the
23 bank officer in Florida?

24 (Documents handed to Court.)

25 THE COURT: I would note that the signatures

1 rp Roberts-direct 916

2 BY MR. NATHAN:

3 Q Mr. Roberts, do you know that all of the
4 securities listed in these documents were delivered to the
5 First National in Miami during the period August, 1965?

6 A Yes.

7 Q Is there some duplication of those documents
8 by reason of the fact there were errors in the --

9 MR. GRUTMAN: I object to that as leading.

10 THE COURT: Yes, I think you are leading.

11 Q Could you explain to the Court why there are two
12 sets of documents relating to the same securities, if there
13 are?

14 MR. GRUTMAN: I can't see the witness and he may
15 be looking at you, you know.

16 A There are a number of securities which had to be
17 tallied and in arriving at the tally the bank was a little
18 sloppy in their presentation of receipts, so they rechecked
19 and then issued a second receipt for the same items.

20 THE COURT: You may proceed, Mr. Nathan.

21 Q Did there come a time when personal property,
22 that is personal belongings and effects, were moved by you
23 to Florida?

24 A Yes.

25 Q When did that take place?

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Roberts-direct

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2 part of the property which you have described earlier today
3 as the farm, other property of the defendant in Connecticut
4 and in New York?

5 A Yes.

6 Q Those thousands of acres are contiguous?

7 A Yes.

8 Q And this is one part of that property?

9 A Yes.

10 Q Mr. Roberts, in 1965 did the defendant acquire
11 a yacht called the Gallant Lady?

12 A Gallant Lady 6th.

13 THE COURT: He had five before that?

14 THE WITNESS: No, but the name of this yacht is
15 Gallant Lady 6th.

16 Q Were you familiar with that transaction as it
17 occurred?

18 A Yes.

19 MR. NATHAN: Let the record show that I am handing
20 Mr. Grutman Exhibit II-12 which is a bill of sale and related
21 to documents in connection with the purchase of the Gallant
22 Lady 6th in 1965, also offered to prove domicile.

23 MR. GRUTMAN: I object to the letter from the
24 Carlo International Company which appears to be the broker
25 through whom the transaction was effected.

1 mee 7 Roberts - direct

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2 (Joint Exhibits II-13 through 17 received in evi-
3 dence.)

4 BY MR. NATHAN:

5 Q Mr. Roberts, do you know of your own knowledge
6 whether the defendant's automobiles, which were bought for
7 his own personal use after January 1965 were registered?

8 A Yes.

9 Q Where?

10 A Florida.

11 Q Did he buy any automobiles after January 1965 for
12 his own personal use and registered anywhere else?

13 A No.

14 Q After January 1965, did he continue to have cars
15 registered in his name in Connecticut?

16 A Yes.

17 Q What cars did he continue to have registered in
18 his name in Connecticut?

19 A Those cars which were used by his employees on the
20 far.

21 Q And did he have any other cars registered in his
22 name in Connecticut?

23 A Well, he did for a year or two, but then even-
24 tually they all were transferred into Florida registrations.

25 Q Did he ever have a car for the person use of any

1 mee 10

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2 THE WITNESS: Yes, it is.

3 THE COURT: May I see the document, please.

4 MR. GRUTMAN: Could I ask one question before it
5 is handed up?

6 MR. NATHAN: Before I offer it, while the Court
7 is looking at it, would you describe, if you know, the
8 transactions which caused this document to be prepared, just
9 in general terms?

10 A Well, the car was seized by the sheriff and in
11 order to redeem it, Mr. Rosenstiel put up this bond and
12 it was redeemed and placed on the farm.

13 MR. GRUTMAN: Your Honor, voir dire?

14 VOIR DIRE EXAMINATION

15 BY MR. GRUTMAN:

16 Q Mr. Roberts as the personal controller of Mr.
17 Rosenstiel for the past 26 years, does this document indicate
18 to you that the car in question was really Mrs. Rosenstiel's
19 car, the lady that is sitting over there?

20 A I don't know what you mean by really Mrs. Rosen-
21 stiel's car? The car was purchased for Mr. Rosenstiel for
22 his birthday and it was his car.

23 Q It wasn't the car that Mrs. Rosenstiel used?

24 A The car was purchased for Mr. Rosenstiel for
25 his birthday.

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2 Q I heard that, but I ask you wasn't the vehicle
3 here that we are concerned with, the car which was used by
4 Mrs. Rosenstiel, Mrs. Susan Rosenstiel, for her personal
5 use?

6 MR. NATHAN: I don't like to object--

7 Q Like the car which Libby drove?

8 A No.

9 (Joint Exhibit II-18 marked for identification.)

10 THE COURT: I think the weight of this document
11 is relatively modest. I frankly do not see the prejudice to
12 the plaintiff by it being introduced.

13 At the very least it indicates that Mr. Rosen-
14 stiel was in Miami Beach, Florida, on the 11th of March,
15 1966, which appears to be the dating and the information
16 just above the signature with notarization which follows from
17 the Florida notary, although I say the probative value is
18 minimal, I overrule the objection.

19 MR. GUTMAN: Very well.

20 (Joint Exhibit II-18 received in evidence.)

21 MR. NATHAN: Your Honor, would the record show
22 that I have given the next exhibit which is, I believe
23 number 23, Mr. Grutman is looking at it, I represent to the
24 Court that these are documents kept in the regular course of
25 business in connection with the sale by the defendant of his

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2 town house in New York City, 5 East 80th. The documents
3 include papers showing the offers and negotiations with a
4 variety of parties finally leading up to a closing statement
5 which evidences the sale of that house in January of 1968 in
6 the presence of this witness.

7 MR. GRUTMAN: I have no objection to the closing
8 statement which reflects that on January 26, 1968, I think
9 is the date, there was a closing on this premises. I do,
10 however, object to the self-serving letter of Mr. Rosen-
11 stiel dated April 11, 1967, the memoranda and telexes
12 containing information that Mr. Roberts is in Roy Cohn's
13 office at 415, or many other matters that have no bearing
14 whatsoever on domicile or an issue in this case.

15 MR. NATHAN: May I state, your Honor, that we
16 represent that this is Mr. Robert's entire file in this
17 matter, and it is offered to show that efforts were being
18 made to sell the house during this period.

19 I can also get that in by Mr. Roberts' testimony,
20 but Mr. Grutman would like substantiation and we have at-
21 tempted to give him substantiation.

22 It is important, of course, on the question of
23 domicile as to when the defendant started to make his efforts
24 to dispose of his New York home.

25 THE COURT: I would suggest that there is some

1 mee 13 Roberts - direct 936

2 material in here which is extraneous.

3 You do represent this is the complete file and
4 you also represent you are trying to show from this file
5 that there was an extensive attempt to sell the property
6 which extended over a period of time.

7 I could see that there is a remote probative
8 value there. I think under the circumstances, and we cer-
9 tainly can eliminate the extraneous matter, the Court can
10 in its review of the case--I will take the whole thing and
11 you each can comment on anything you want, and we will
12 cull out what I think is a substantial amount of material of
13 either no probative or little probative value. Objection
14 overruled.

15 23 received in evidence.

16 (Joint Exhibit II-23 received in evidence.)

17 Q Mr. Roberts, during this whole period, beginning
18 in early 1965 until the letter the Judge referred to, evi-
19 dencing that an informal agreement had been made for the
20 sale of this house, were you engaged in consequently dealing
21 with brokers and others who expressed an interest in buying
22 the house?

23 A Yes.

24 Q And did you call these offers and communications
25 to the attention of Mr. Rosenstiel?

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2 A Yes.

3 Q Now, were all these offers and communications
4 embraced in these documents or were there some offers and
5 communications which were described to the--or passed on
6 to the defendant orally?

7 A I don't think I passed communications to him
8 orally on offers for this house.

9 THE COURT: I am sorry, it would be helpful to
10 the Court if I heard your testimony rather than you face
11 away from me and tell it to Mr. Nathan. It is nice to
12 tell him, too, but I am charged with trying the facts here.
13 I didn't hear the last answer.

14 THE WITNESS: I don't believe that I spoke to
15 Mr. Rosenstiel orally to advise him of offers for the house.
16 Everything was done either in writing or through notifica-
17 tion to his secretaries who then handed him the memorandum.

18 THE COURT: I think this would be an appropriate
19 time for us to take our luncheon recess.

20 According to my watch it is 1 o'clock. We will
21 recess. We will resume at 2 p.m.

22 (luncheon recess.)

23

24

25

A F T E R N O O N S E S S I O N

2.00 P.M.

S E Y M O U R R O B E R T S, resumed.

THE COURT: You may proceed, Mr. Nathan.

MR. NATHAN: Your Honor, as the last exhibit for this witness I am offering Joint Exhibit II-24, cancelled checks and invoices dated December, 1965, and January, 1966, covering the construction of a swimming pool at defendant's Miami residence. I will represent that the witness will say these are documents kept in the regular course of business.

THE COURT: Show them to Mr. Grutman.

MR. GRUTMAN: I have seen them. Your Honor, these checks are printed checks on the account of a woman then called Blanca Aldona Tucker, of 201 East 79th Street, New York, New York. They are made out to the order of the Catalina Pools, Incorporated, in the amount of \$3000 in the case of one, \$2500 in the case of the other. The bank is struck out. Instead of being the City Bank, it becomes the Manufacturers Hanover; instead of Blanca Aldona Tucker the signature is by Lewis Rosenstiel himself. Surely, there must be a level of de minimis below which you will not receive evidence, notwithstanding that the witness says he regularly keeps them in the course of his business.

2 This is totally self-serving, and I don't believe that it
3 is proof of domicile, other than it is another voluntary act
4 by the defendant of an extremely tenuous nature which I
5 don't think even qualifies as a rock to be placed in the
6 scale.

7 MR. NATHAN: I fail to see what difference it
8 makes what bank the checks were drawn on. It is obvious,
9 and the witness will testify, that apparently the defendant
10 did not have any checks, so that he borrowed a couple of
11 checks and wrote his own bank name and account number on
12 them. As a result, the checks came back to his account
13 and they were kept by Mr. Roberts with all the other checks
14 of the defendant. That is simply an objection in the
15 nature of a red herring and certainly in the nature of
16 cross-examination.

17 THE COURT: I would note that attached to the
18 checks are two invoices of Catalina Pools, Inc., one dated
19 December 21, 1965, one dated January 31, 1966, that appear
20 to relate to the construction of the swimming pool, and the
21 invoices are both made out to Mr. Lewis Rosenstiel. I
22 suppose they are offered on the theory that when one puts
23 a pool into his home he evidences more permanent in
24 remaining there, he has made an additional investment in
25 his house, and though I don't think that the facts are

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2 dispositive of anything, I think that they are more stones,
3 albeit perhaps small ones, in view of the substantial means
4 of the individual.

5 Mr. Roberts, am I correct that there was, in
6 fact, a pool which was constructed at the residence which
7 Mr. Rosenstiel occupied at 1350 West 29th Street, Miami
8 Beach, Florida, and that the pool was built in late 1965,
9 early 1966.

10 THE WITNESS: Yes.

11 THE COURT: Objection overruled.

12 (Joint Exhibit II-24 received in
13 evidence.)

14 DIRECT EXAMINATION CONTINUED

15 BY MR. NATHAN:

16 Q Mr. Roberts, did there come a time when the
17 defendant sold all his stock in Schenley Industries, Inc.?

18 A Yes.

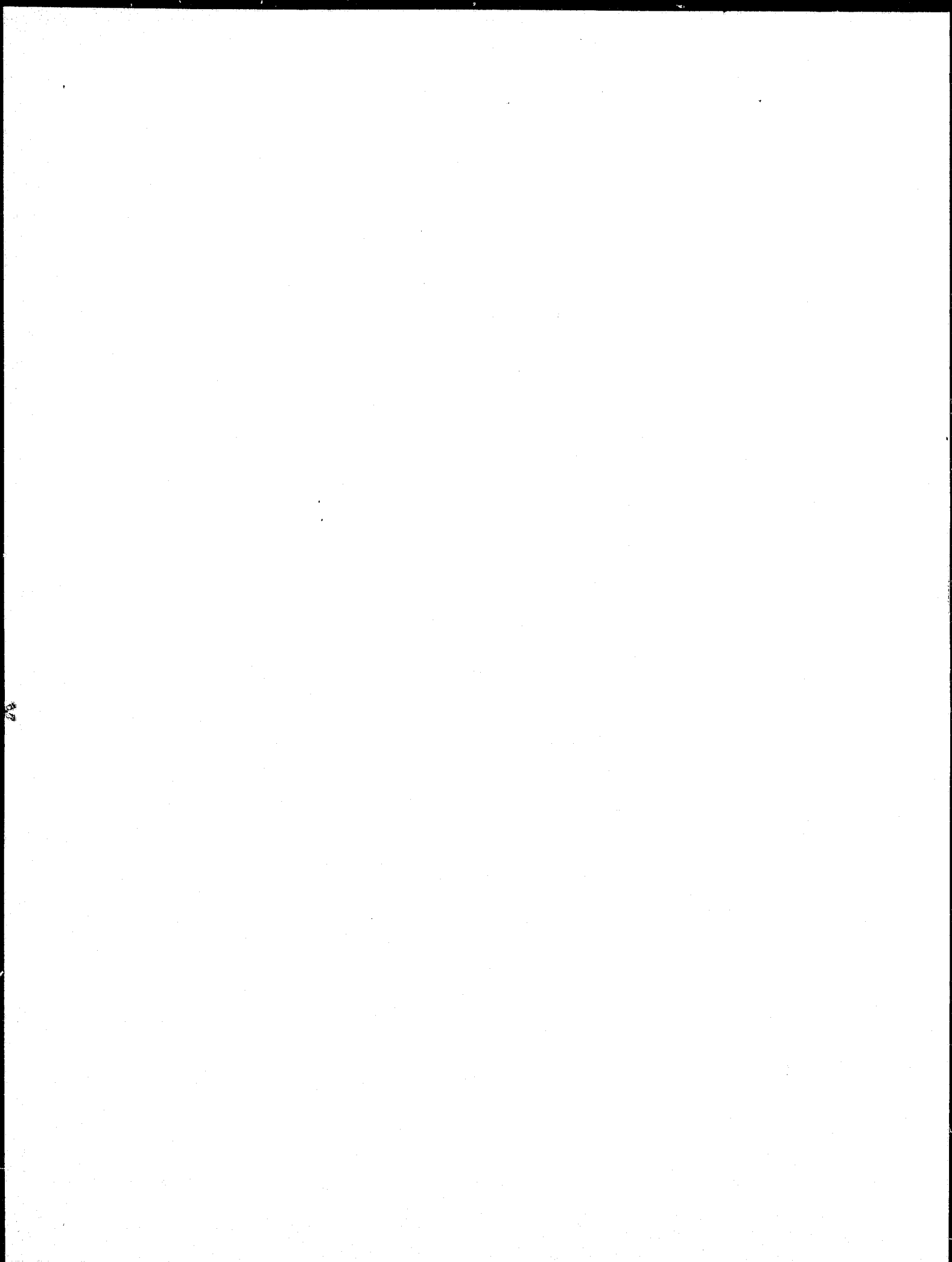
19 Q When did that happen?

20 A In March, 1968.

21 Q Were you at the closing?

22 A Yes.

23 Q Did you or did you not at the closing personally
24 deliver all of the shares that the defendant then owned in
25 Schenley Industries, Inc.?



2 A Yes.

3 Q Did you receive the purchase price?

4 A Yes.

5 Q What was the consideration which you received?

6 A Certified checks.

7 MR. GRUTMAN: Could we have the amount?

8 THE COURT: Let's see if Mr. Nathan wants to ask
9 it. I think we heard some testimony on this before, and I
10 think it might be worthy of a question.

11 Q What was the purchase price per share?

12 A \$80.

13 Q Do you recall how many shares the defendant sold?

14 MR. NATHAN: I will say, your Honor, that my
15 recollection is that the contract of sale is in evidence
16 and that there is no need to test the witness's memory,
17 unless he happens to recall.

18 THE COURT: If you do recall.

19 A I think he sold about 300,000 shares.

20 THE COURT: We recognize that that is not an
21 exact number, but that is a close approximation?

22 THE WITNESS: Approximately he sold 300,000 shares.

23 Q Do you know whether the information contained
24 in the contract of sale was accurate as to the number of
25 shares, as well as everything else?

2 A I presume it was.

3 Q You were physically present and checked it at
4 the time?

5 A I didn't check the contract of sale, no.

6 Q Within a period of a week or two had you received
7 certified checks for all of the shares which you delivered
8 for the account of Mr. Rosenstiel?

9 A Yes.

10 THE COURT: Incidentally, for the record, as I
11 understand it, that agreement, which is dated March 20, 1968,
12 is Joint Exhibit IV-4.

13 MR. NATHAN: Thank you, your Honor. No
14 further questions.

15 THE COURT: You may inquire, Mr. Grutman.

16 Just before Mr. Grutman begins, so that the
17 record will be clear, I will permit him to go beyond what
18 might be, strictly speaking, the scope of direct examination.
19 This would be consistent with the point that was made last
20 week and the statement which I made on the record at that
21 time.

22 You may proceed, Mr. Grutman.

23 MR. GRUTMAN: May I have just a moment, your
24 Honor.

25 Have you got the ante-nuptial agreement?

15

11.11.11

THE COURT: That's different. I will sustain that objection because I don't think that encompasses your question.

Q Where was Mr. Rosenstiel performing those services for which the company was recompensing him as you just told us?

A Wherever he was.

Q How much of it was done in New York?

MR. NATHAN: May we have the period, your Honor.

MR. GRUTMAN: '65, '66, '67.

THE WITNESS: You will have to qualify that, New York is a big place. What do you mean, where, what in New York? I don't understand the question.

THE COURT: Let's try not to generalize it.

MR. GRUTMAN: I will try to do that.

THE COURT: Let me ask you a question, just one. What percentage, approximately what percentage of time which Mr. Rosenstiel devoted to Schenley Industries, what proportion of that time was devoted to Schenley while Mr. Rosenstiel was physically within the State of New York?

A Approximately 100 to 120 or 130 days.

THE COURT: Now, are you speaking of the years 1966--1965, 1966 and 1967?

2 A The years in question, yes.

3 THE COURT: 120 to 130 days a year.

4 A Approximately, approximately a third of the year,
5 approximately.

6 THE COURT: Approximately a third of the year.

7 Q When you gave his Honor the answer 100 to 130
8 days is that because you have some journal or some record
9 or calendar which reflects Mr. Rosenstiel's whereabouts
10 throughout the entire year?

11 A Yes.

12 Q Do you have those journals still available?

13 A No.

14 Q Where are they?

15 A I don't know.

16 Q Have they been destroyed?

17 A I don't know.

18 Q Where were they regularly kept, Mr. Roberts?

19 A They are regularly kept by his Schenley secre-
20 tary.

21 Q His daily appointment book?

22 A Yes.

23 Q Any other kind of a book or record which would
24 describe the whereabouts of Mr. Rosenstiel on each of the
25 365 days of every year?

Q When Mr. Rosenstiel spent up to 130 days a year in New York, were those working days that you are speaking of?

A That means any time he set foot within New York State and spent one minute to 24 hours.

Q Then I take it that would average out to about 20 days a month on a year-round basis?

A I can't figure it your way. If you explain to me how you got it, I might agree with you.

THE COURT: It would be approximately ten days a month.

MR. GRUTMAN: Ten days a month.

Q Were you with him during all this time?

A No.

Q Was the time that he spent in New York up to 130 days as you estimate it one particular time of the year or spread more or less evenly throughout the whole of the year?

A No, it would usually be some time concentrated between maybe March through November, something like that.

Q Could it have been more than 130 days a year?

A It could.

Q How much of the time throughout the year was Mr. Rosenstiel in Connecticut?

A The same.

2 Q In other words, whenever he was in New York He
3 was in Connecticut?

4 A No. You asked me how much of the time. I meant
5 the same as he was in New York. Approximately a third in
6 New York, a third in Connecticut, and a third in Florida.

7 MR. GRUTMAN: I move that that be stricken, your
8 Honor.

9 THE COURT: Well, let me leave it this way.
10 So far I have a note that he spent approximately a third of
11 the year in New York, approximately a third of the year in
12 Connecticut. Anything beyond that is stricken as not
13 responsive.

14 Q How many months of the year did Mr. Rosenstiel
15 work?

16 A 12.

17 Q Was there any time at all when he was free from
18 the burdens of running Schenley and was just on vacation?

19 A Not to my knowledge.

20 Q Always at work for Schenley? Is that it?

21 A More or less.

22 Q How much of the year was he in Europe between '65,
23 '66 and '67?

24 A I don't think he was in Europe in those years.

25 Q Were you familiar with the property in Connecticut?

2 A That was a gain.

3 Q In the year 1965 --

4 MR. NATHAN: May the record show that the
5 property in New York assumes the property in New York City?

6 THE COURT: Yes.

7 MR. GRUTMAN: Yes.

8 Q 5 East 80th Street sold to Mishelum Riklis for
9 \$350,000 represented a gain. Now, in 1965, at the same
10 time the Connecticut property was assessed for a million and
11 a half, what was the approximate assessed valuation for the
12 half-acre in Miami Beach?

13 A I don't know.

14 Q Would it be as much as a million and a half?

15 A I don't think so.

16 Q You know that it is substantially less?

17 MR. NATHAN: Objection, not only to the form of
18 the question, but the line of inquiry. We are not trying
19 a real estate valuation case.

20 THE COURT: I do fail to see the relevance of it.
21 I suppose a person could reside in his smaller palace than
22 in his larger palace. That has been known to occur with
23 people around the world, and I am not sure that that is
24 probative of very much.

25 Q In any event, just so it is clear, would you

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Roberts-cross

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2 Q Was any portion of the proceeds of those shares,
3 the sale of those--

4 A Wait a minute, would you rephrase that whole
5 question, please.

6 Q Approximately a million shares--

7 A No, from the beginning, what's your question.

8 Q I am coming to the question.

9 A You asked me a question before and I said yes,
10 and now I'd like to--

11 Q Was the sale of all these securities paid for
12 by certified checks?

13 A Yes.

14 Q That was the question you asked me to repeat.

15 A Well, I thought there was one previous, but okay.

16 Q Okay.

17 A Yes.

18 Q Now, I ask you, Mr. Roberts, from the proceeds of
19 that sale, was any money set aside for or on behalf of Susan
20 L. Rosenstiel?

21 A No.

22 Q Are you familiar with the provisions of Mr. Rosen-
23 stiel's present last will and testament?

24 A No.

25 Q Do you know--has Mr. Rosenstiel told you--whether

Q Where was he?

A He was in Florida.

Q Have you spoken with him in New York City since 1967?

A Oh, yes.

Q When was the last time you saw him in New York City?

A It may have been last summer.

Q In the year 1967, was he still spending as much time in New York City as had been his wont and custom in the years 1965 and 1966?

A Yes.

Q Did that continue up until the time that he had a stroke sometime in I believe 1970?

A No.

Q When did he start tapering off contacts with New York City?

A After November 1968.

Q And that's the date when he sold out his interest in Schenley, is that correct?

A That's correct.

Q Does he have any connection whatsoever with Schenley today?

A Not that I know of.

Q Do you know when that change was made?

A No.

Q I know that according to this statement, Mr. Rosenstiel in that year received 250,000 in wages and \$189,843.38 in other compensation, and that--

MR. NATHAN: Objection, the document speaks for itself, and the witness can read it.

THE COURT: Of course the Court agrees, and the Court has already seen it, so I think these facts are in evidence. If you want to pose a question--

MR. GRUTHAN: I just wanted to know who had given him the tax advice to pay a State Tax on only \$3,152.80 on that kind of income. Did you?

MR. NATHAN: Objection, your Honor.

THE COURT: Sustained.

Q Would you tell me the last time that you ever saw Mr. Rosenstiel before today--have seen Mr. Rosenstiel before today?

A About two weeks ago.

Q Where did you see him?

A Florida.

Q For what purpose did you see him?

MR. NATHAN: Objection.

THE COURT: Sustained.

Q did you discuss any business with Mr. Rosenstiel in Florida?

A No.

Q did you discuss any financial matters with Mr. Rosenstiel in Florida?

A No.

Q Did you make any report to Mr. Rosenstiel at that time, or was it just a social visit?

A It was just a social visit.

Q When was the last time before this social visit that you ever discussed any financial matters with Mr. Rosenstiel in Florida?

A A year or two ago, I really don't remember.

Q On the occasion of that last visit, did you talk with Mr. Rosenstiel?

A Yes.

Q Did he talk to you?

A Yes.

Q Did you take meals with him?

A No.

Q How long were you with him?

A Five to ten minutes.

Q When you spoke with him, did you understand him?

A I understood him.

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Roberts - cross

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2 Q I thought earlier you said that you and Mr. Rosen-
3 stiel were not on a social level of friendship, is that
4 correct?

5 A That's correct.

6 Q Had he sent for you to come and see him?

7 A No.

8 Q You just went down to see him on your own?

9 A Yes.

10 Q It had nothing to do with financial affairs or
11 business, is that correct?

12 A Correct.

13 Q Did it have anything to do with this lawsuit?

14 A No.

15 Q When you spoke with Mr. Rosenstiel, did he make
16 rational or logical responses to your questions.

17 A I didn't ask him any questions.

18 Q Did he appear to understand what you said to him?

19 MR. NATHAN: Your Honor, I object to this as
20 irrelevant.

21 THE COURT: Overruled.

22 A Yes.

23 Q Did he make responses that were logically related
24 to the statements that had been preceded in what you told
25 him?

A Well, I didn't tell him anything, I just asked him how he was.

Q Did he walk around?

A No.

Q Was he in a wheelchair?

A I believe he was.

Q Did he have an attendant?

A Yes.

Q Was the wheelchair moved at all while you were with him?

A Yes.

Q By himself or by the attendant?

A I believe by the attendant.

Q Was the attendant, so far as you know, a nurse?

A Yes.

Q What was his general disposition when you talked to him, the same as you had always seen him?

MR. NATHAN: Objection to leading.

THE COURT: Well, it is cross examination. I will permit it.

Overruled.

If you can answer the question, Mr. Roberts, would you do so?

THE WITNESS: Well, he had just gotten up and was

going to eat breakfast, so he was in the process of waking up, really.

Q You saw him in his bedroom?

A No.

Q In the dining room?

A Yes.

Q And was he eating a full meal?

A I didn't stay that long.

Q Did you see whether he fed himself?

A He fed himself, yes.

Q Did you see his hands, did they shake or tremble?

A Yes.

Q Both hands?

A He only used one.

Q Could he hold a glass in that hand?

A He didn't do it in my presence.

Q What's the longest sustained time that he spoke to you, continuous speech on his part?

A Just cryptic remarks.

Q Occasioned by the nature of the conversation?

A Correct.

Q Did you at any time ever discuss with Mr. Rosenstiel his change of domicile from either Connecticut or New York to some place else?

THE COURT: We go, gentlemen, continue your cross examination.

Q When in 1964 did Mr. Rosenstiel first speak to you concerning his thoughts about changing domicile?

A November, December.

Q Was it after he had lost the litigation in New York?

MR. NATHAN: Objection, the record speaks for itself on that.

I don't think we can add anything by questioning the witness on a relation of one event to another event.

THE COURT: Let me hear the question.

(Question read.)

THE COURT: Overruled.

THE WITNESS: I don't remember the date that he lost the litigation in New York.

Q Were you familiar with Mr. Rosenstiel's problems with his wife, Susan?

A Yes, yes.

Q Did you testify in some of the litigation here in New York?

A Yes.

Q Did you testify before Judge Fink?

A Yes.

Robertson-Cryns

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A Right.

Q And during all the remainder of those four years he still continued carrying on at Schenley as he had all the years before that you knew him?

A That is correct.

Q What was done in 1964 about changing Mr. Rosenthal's domicile, if anything?

A Nothing.

Q In 1965 when all the stock was sent down to the safe-deposit vaults, did that stock remain continuously in one safe-deposit box until it was sold to Mishelum Riklis in 1968?

A It was kept down there.

Q Never taken out and never pledged?

A I think we may have pledged some stock. I don't recall.

Q Between '65 and '68 did Mr. Rosenthal have bank accounts in States other than Florida?

A He had bank accounts in California, in Texas, in New York, in Connecticut, and in Florida.

Q Was the aggregate of the bank accounts in the States other than Florida greater than what he had in Florida?

A Yes.

2 of this case, the Court believes that this particular area
3 of inquiry will fall within an exception to the hearsay
4 rule.

5 The Court has also referred to proposed rules
6 of evidence for United States Courts and Magistrates and
7 would make particular reference to Rule 803, Subsection 3,
8 which relates to hearsay exceptions and permits a statement
9 of the declarant's then existing state of mind such as
10 his intent and his plans to prove the particular fact
11 believed.

12 The exception there appears to relate only to
13 the execution, revocation, identification or terms of the
14 declarant's will and I would assume that there will be no
15 testimony elicited in that latter regard. So the Court
16 will overrule the objection and permit the conversation
17 insofar as it relates to the future intentions expressed
18 by the defendant to Mr. Wise in connection with the
19 matter of domicile or change of domicile.

20 'You may proceed, Mr. Nathan.

21 MR. NATHAN: Thank you, your Honor.

22 BY MR. NATHAN:

23 Q Would you state again when and where that first
24 conversation took place with Mr. Rosenstiel?

25 A In Florida in the fall of 1964 on his boat.

2 Q Will you tell the Court to the best of your recol-
3 lection what he said about his intent and state of mind
4 with respect to domicile?

5 A He said that he intended to make his home down
6 there in Florida.

7 THE COURT: Sir, I am sorry, you will have to
8 keep your voice up and address the Court. I am trying to
9 hear the evidence and I will rule on it as I hear it.

10 A He said he intended to make his home in Florida.

11 Q Did he say anything else on that subject?

12 A As to the reasons, he enjoyed the life down
13 there. He wanted to spend less time at his work. He
14 wanted to spend more time sailing and he thought he was
15 being overworked.

16 Q Did that same subject come up again in your
17 presence?

18 A It came up the following spring. In the spring
19 of 1965.

20 Q Where?

21 A At his home in Greenwich in the living room.

22 Q Would you tell just enough of the circumstances
23 so that the Court will know the subject matter of the dis-
24 cussion, how this question came up?

25 A I dropped in to visit Mr. Rosenstiel and he had

2 company. A Mr. Lombardy, who was the town supervisor of
3 North Castle, and I believe the town lawyer, Mr. Moore.
4 They were discussing Mr. Rosenstiel's property.

5 Q His property located where?

6 A The property located on Round Hill and on
7 Lake Avenue.

8 Q What was the matter which they were discussing
9 in connection with that property?

10 A His school board wanted to acquire property --

11 MR. GRUTMAN: I object to a conversation with
12 these other people, your Honor.

13 THE COURT: Yes, I think that that is not rele-
14 vant. If you are offering it to prove that a conver-
15 sation took place among these various people but not for
16 the truth of the matter asserted, I think it would be
17 admissible because there the hearsay rule would not apply,
18 so I will not accept this conversation for the truth of the
19 matter asserted.

20 MR. NATHAN: That's perfectly in accord with my
21 purpose, your Honor. I was simply trying to give enough
22 of the background not to prove the subject matter of the
23 conversation but to explain how the subject of domicile
24 came up.

25 THE COURT: With that limitation in mind, Mr.

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Wise-direct

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2 Grutman, I am going to overrule your objection. I obviously
3 will not take this conversation for the truth of the matter
4 asserted therein.

5 Q Would you pick up where you left off, if you can
6 remember, or would you --

7 A They were discussing Mr. Rosenstiel's property
8 when I entered the room.

9 Q After they left, did you have a discussion with
10 Mr. Rosenstiel alone?

11 A Yes.

12 Q Would you tell just briefly the subject matter
13 of your discussions?

14 A I asked him if he would give me a clarification
15 of the things I had heard, and he did do so.

16 Q Will you just tell the Court to begin with where
17 the property under discussion was in relation to your
18 property?

19 A The particular piece of property that was under
20 discussion was adjacent to mine. Owned by Mr. Rosenstiel
21 but within two feet of my property.

22 Q Would you tell how this discussion evolved and
23 get us as quickly as possible to the subject of anything he
24 may have said about domicile?

25 A I was disturbed at the idea that he would donate

2 property to the school board of North Castle for the purpose
3 of the school because I thought it would have a damaging
4 effect on my property and I pointed out that I was
5 concerned about that, the impact on the value of my
6 property and in general his plans for the development of
7 all his property, which I thought he would lose the privacy
8 and pleasures --

9 MR. GRUTMAN: I object to this witness's mental --

10 THE COURT: Yes, I was going to ask you about that
11 statement, about what he was disturbed about.

12 I am permitting you, within certain rules of
13 evidence, to give testimony as to the substance of your
14 conversations with Mr. Rosenstiel. However, I cannot
15 permit evidence of what may have been in your mind, what
16 you were thinking about and which may have disturbed you.
17 So try to stick to the substance of what he said to you
18 and what you, in turn, said to him when you were discussing
19 this matter of his possibly selling or giving up some
20 portion of his property.

21 THE WITNESS: In essence, your Honor, he --

22 Q Let me give you a narrower question.

23 State what you said to Mr. Rosenstiel and what
24 he said to you in connection with the effect of this gift
25 of property on the value of his property and on the value

1 zpl1 Wise-direct 1060

2 of your property.

3 A He dismissed my objections on the simple grounds
4 that he was not going to be living there. He was going
5 to be living in Florida.

6 Q I show you Joint Exhibit II-11-A, consisting of
7 two deeds. Have you had an opportunity to look over
8 these deeds in my office?

9 A Yes.

10 Q Can you tell the Court anything -- what those
11 deeds are? Are those the deeds that cover the property
12 of Mr. Rosenstiel adjacent to your property?

13 A Yes.

14 Q You can tell that by looking at the description?

15 A Not only by the description but the fact that
16 it records the transaction in which I acquired the property.

17 Q The adjacent property?

18 A Yes. It refers to me in here.

19 Q When next did you discuss, if at all, with the
20 defendant any plans for change of domicile or actual change
21 of domicile?

22 A All through '65 and the summer of '65 and again
23 in '66.

24 Q Where were you during the summer of '65?

25 A Living on Round Hill Road.

1 zpl2

Wise-direct

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2 Q How often did you see Mr. Rosenstiel during that
3 summer?

4 A Maybe two or three times a week.

5 Q Had that been your relationship for a period of
6 time?

7 A More or less.

8 Q Under what circumstances did you visit Mr.
9 Rosenstiel?

10 A Well, there were two occasions. Where he might
11 ask me to write something for him, and which I would visit
12 him on a semi-official status and on other occasions it
13 was social but with the idea I was going to be writing a
14 history of Mr. Rosenstiel's role in the distilling industry
15 of this country.

16 Q Will you tell us what conversations you can
17 remember with Mr. Rosenstiel during the summ of 1965?

18 A You have to be a little more specific.

19 Q Well, during the summer of 1965, I believe you
20 said that you had a number of meetings with Mr. Rosenstiel
21 at which you discussed the question of his domicile?

22 A Right.

23 Q Would you tell us the substance of those dis-
24 cussions insofar as what he said?

25 A Well, when I continued to raise the issue of

2 the property and how I could protect the value of my
3 property, the question of his domicile was always a stone-
4 wall in front of me, which I could not get by.

5 Q Well, what did he say?

6 A He simply said he was going to be living in
7 Florida and he was now looking at this property from a
8 business standpoint, not so much as a personal residence.

9 Q Did he say where he was actually living during
10 that period of time?

11 A Well, it was obvious where he was living at the
12 period of time. He was in Greenwich when I was with him
13 or he was spending his time in Florida or he was still
14 occasionally in New York.

15 Q Did he say anything about his ties to Connecticut?

16 A Well, yes. He had indicated that he was --
17 he said that he was unhappy with a number of aspects of his
18 life in Connecticut and these were backing up his decision
19 to live in Florida. He had had disputes with the town
20 board.

21 Q Over what?

22 A Pardon?

23 Q Over what?

24 A Zoning arrangements. He was unhappy over the
25 Stanwyck Club which had gone up across the street. His

2 relationships with his family were not satisfactory.

3 And the company was an increasing burden to him, the
4 management of it.

5 Q Did he tell you anything in particular about
6 the problems with the Stanwych Club in relation to his own
7 problems with the Zoning Board?

8 A Yes, the Stanwych Club had received a liquor
9 license --

10 MR. GRUTMAN: Your Honor, I am going to object.
11 I understood that you were overruling my prior objection
12 on the grounds that the expression of intention was an
13 exception under the rules as you interpreted them. I do
14 not believe this line of inquiry falls within that accepted
15 exception. I object to this line as hearsay, objectionable
16 hearsay, and I press my objection.

17 MR. NATHAN: May I state to your Honor that this
18 evidence is proffered as showing the defendant's state of
19 mind in relation to Connecticut versus Florida, that is,
20 the subjective intent and state of mind really coalesce
21 and they are a single exception to the hearsay rule insofar
22 as they reflect the defendant's intent. There is no
23 issue in this case about the Stanwych Club. The only
24 relevance and the only purpose for which this testimony
25 is offered is to show his state of mind at the time he

1 meb

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2 THE COURT: Let him finish. Then you can make
3 your application.

4 Q Did Mr. Rosenstiel tell you how he had answered
5 that question?

6 A "Beth, whatever makes you and the children
7 happy."

8 Q And did Mr. Rosenstiel tell you how he felt
9 about that conversation?

10 A Yes, he expressed his sorry and disappointment
11 over the fact that he did not have the kind of relationship
12 with his children and grandchildren that he would have
13 liked, and it was a further disillusioning experience for him
14 and that's why he wanted to divorce himself from all his
15 present activities.

16 MR. GRUTMAN: Now, your Honor, I am going to
17 object. It is patently preposterous to think that which
18 is what causes a man to find solace in the sunshine of
19 Florida. Whatever that disappointment was is utterly
20 irrelevant and I move that you strike this testimony from
21 the record.

22 THE COURT: Strike it.

23 Q Now, Mr. Wise, how frequently did you see Mr.
24 Rosenstiel during the period 1965 through 1968?

25

A With some degree of frequency in the summer
from June through September.

Q Were you generally aware of when Mr. Rosenstiel
in residence at Colliers Farm and when he was not?

A Yes.

Q During that period, can you state generally when
in residence at Colliers Farm?

A I'd say three months, the summer months. He
might arrive a week or two early or stay a week or two later,
but generally from June to September.

Q And was he there on any other occasions other
than during those summer months?

A Oh, periodically, during the winter he might
come up for a weekend, if he had been in New York, he might
come up for a weekend and give me a ring.

Q After 1968, the period beginning in 1969, to date,
has his pattern of living in relation to Colliers Farm
changed?

A Yes, he has only been, I'd say -- he has never been
up there in the winter, he has only been up there in the
summer, from maybe mid-June to late August.

MR. NATHAN: No further questions, your Honor.

THE COURT: You may inquire, Mr. Grutman.

Q And that included his family life?

A Yes.

Q And his personal plans?

A Yes.

Q Did that have some bearing on his role in the distilling industry in the United States as you contemplated writing his biography?

A Yes.

Q Now, you said in answer to Mr. Nathan's question that in the fall of 1964 was the first time that he had ever made any mention to you of his intention to move his domicile from Connecticut elsewhere, is that correct?

A That's the first time that I recall mention of it, yes.

Q And in 1964, as I made note of what you said, you told us that he told you then in 1964 that he intended to make his home down there in Florida, is that correct?

A Yes.

Q Did he tell you precisely when it was that he would accomplish the fulfillment of that intention?

A No.

Q The next conversation that you told us about took place, you said, in the spring of 1965, at Greenwich in the living-room at Colliers Farm, is that correct?

1 meb

Wise-cross

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2 A Yes.

3 Q As I wrote down what you told his Honor you
4 said at that time you recall Mr. Rosenstiel saying "He
5 was not going to be living there, he was going to be living
6 in Florida."

7 Do you remember saying that to us on direct
8 examination?

9 A Yes, sir, I do.

10 Q Now, as a writer, do you recognize that the tense
11 of the verbs used in that answer is passive future, not
12 present indicative.

13 A Yes.

14 Q Do you recognize that, sir?

15 A Yes.

16 Q And that was in the spring of 1965, correct?

17 A Yes.

18 Q Surely after the month of January 1965, is that
19 correct?

20 A Yes, sir.

21 Q And when he spoke to you around mid-year of 1965,
22 or whenever in the spring it was, as you recollect that
23 conversation, Mr. Rosenstiel's expression was of something
24 he intended to do in the future, is that correct?

25 A Present and future.

1 meb

Wise-cross

1077

2 Q He didn't say that he had established his domicile
3 in Florida in that conversation --

4 A I think he did.

5 Q Just a moment, sir, wait until I finish my
6 question.

7 THE COURT: Let him finish the question. Then
8 you try to answer it.

9 Q Having told us that as you recall it on direct
10 examination that he said in the living-room "He was going
11 to be living in Florida and was not going to be living
12 there," does that refresh your recollection that at that time
13 Mr. Rosenstiel did not say that he had accomplished the
14 intention of changing the domicile which he had spoken to
15 you about first in the fall of 1964?

16 A In my understanding of the conversation, sir,
17 it meant that he had established his domicile there and
18 was going to be living there most of the time in the future

19 Q You didn't tell us that he said that at that
20 time. You said, sir, "He was not going to be living there,
21 he was going to be living in Florida."

22 MR. NATHAN: Objection, that is argumentative.

23 THE COURT: It is argumentative and I would
24 sustain an objection as to form. I have the point.

25

1
2 MR. GRUTMAN: All right, your Honor.

3 Q Do you recall having answered some questions
4 for Mr. Nathan in which he used the word "domicile"?

5 A Yes, sir.

6 Q When you answered the questions about domicile
7 what did you understand the word "domicile" to mean?

8 A That that was his main place of residence,
9 and that he had become a legal resident there, that he would
10 vote from there.

11 Q Do you know that Mr. Rosenstiel has not voted
12 in the State of Florida?

13 A I don't know anything about his voting.

14 Q He never told you that he had voted there,
15 had he?

16 A No.

17 Q And you had been to Florida, had you not?

18 A Yes, sir.

19 Q A number of times?

20 A Yes, sir.

21 Q And he on his boat?

22 A Yes, sir.

23 Q How would you describe the difference between
24 the size of the property in Florida as contrasted with
25

2 here, I spent two, three, four evenings a week with him,
3 I was in almost daily contact when he was traveling, when
4 he did go out of town he always told me how he could be
5 reached, and I would say that I was in very frequent
6 contact with him during that entire period of time.

7 Q Now, could you tell us from your recollection
8 how much of his time was spent in the various states that
9 he spent during the years 1965 through 1968?

10 A I would say that beginning in '64, he spent an
11 increasing amount of time in Florida and he spent consider-
12 able time there in '65, '66, '67. I could not give you the
13 number of days. I have never had occasion to check that.

14 Q Could you state where he spent the most time,
15 that is, did he spend more time in any one state than in
16 any other state during that period?

17 A Well, I would say that during that period he
18 spend as little time as he could in New York. The time was
19 fairly well evened up I would say between Florida and
20 Connecticut.

21 Q Under what circumstances did he stay at his town
22 house in New York during this period?

23 A He would -- may I stand up just a minute, I have
24 a cramp in my leg.

25

1
2 THE COURT: The witness, if he would like to,
3 can give his testimony standing.

4 THE WITNESS: This will disappear in a minute.

5 Q Would you like to take a recess?

6 A No, I am perfectly all right.

7 He would stay at the town house when he had to
8 come to New York for conferences, when there were business
9 matters here that had to be tended to.

10 Q Did he conduct a business in Florida as well?

11 A Oh, yes. And all of us in Schenley, when he was
12 in Florida, made frequent trips down there, and there
13 would be a constant round of people going down there all
14 the time for various business meetings.

15 Q In addition to being executive vice-president,
16 did you also hold a post of director during this period?

17 A I was director of the corporation during my
18 entire period of employment for Schenley.

19 Q Now, did you ever attend any formal directors'
20 meetings in Florida?

21 A Oh, yes.

22 Q During the period of '65 through '68, can you
23 estimate how many?

24 A There were several of me. I wouldn't
25 want to say specifically, but I know there were several.

Q Do you recall where those Florida directors meetings were held?

A The directors meetings were held in the Purdy street office of Schenley.

Q Now, since 1968, have you keep in touch with Mr. Rosenstiel?

A Yes, indeed. I have called on him whenever I have been in Miami, we talk on the phone from time to time, and we have had frequent contacts during the past four years.

Q Do you have a home in Florida?

A I do have and we spend from mid-November until around the 1st of April at Marco Island.

Q Do you know what proportion of the year Mr. Rosenstiel has spent in Florida since 1968?

A Well, he has spent certainly the better portion of the year. He had a serious illness a couple of years ago, was in the hospital, he was in the hospital up here, he has spent his summers, as I recall, at Connecticut.

zpl

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1106

Q Do you know what months he spent in Florida since 1968?

A He likes to return to Florida at the end of the hurricane season, which is usually at the end of September and October.

Q Then when does he come back up North, if he does?

A In the very late spring or early summer.

Q Was this true prior to 1969 as well?

A Are you talking the period '64 to --

Q '65 through '68.

A Yes, I would say so.

Q When did Mr. Rosenstiel conduct his business as a general matter?

A Well, at the present time he is not conducting --

Q No, during the period of '65 through '65.

A In Florida he had a Florida office and he would conduct a lot of business at his home in Florida. When he was up here he would conduct a lot of business at his home on 80th Street. He spent some time in the office and in the summers when he was out at Connecticut, he would not come in to New York unless he absolutely had to and business was conducted out there.

Q Would you just describe in a sentence or so Mr.

character of good repute and this was a good company.

Q Are you generally familiar with the details of his life, his biography, so to speak?

A Basically?

Q Yes. Could you give us in a few sentences his personal life and career?

A He started -- he had an injury to his eyes --

Q Tell us where he was born, if you know.

A He was born in Cincinnati --

MR. GRUTMAN: Your Honor, is this witness here to decolorize --

THE COURT: If you want to make an objection, state it and state the grounds for it.

MR. GRUTMAN: Irrelevancy, immateriality, incompetency, hearsay and no bearing on any issue of the case.

THE COURT: Well, I have great difficulty in seeing the bearing of Mr. Rosenstiel's background here. If you want to get to matters which counsel has injected into the case, fine. I will assume that Mr. Rosenstiel, now 82 years old, had an extremely successful business career stretching over a number of years up to 1968 as the head of Schenley Industries. That thereupon he sold his stock. He is now retired. I really don't see the

1 zpl8 Nichols-direct 1123

2 Q Don't get into anything that smacks of what he

3 said.

4 A I am trying not to. I am trying not to.

5 Q I would strike the work "critical" because that

6 may imply something that he said. Don't even characterize

7 in any way what he said.

8 MR. GRUTMAN: I move to strike the responses of

9 the witness as all conclusions on the part of this man.

10 THE COURT: Let's hear the rest of the answer and

11 then I would like to hear you. There seems to have been

12 some colloquy here -- let me hear the whole answer and then

13 I will hear you.

14 Q Did he ever tell you prior to your telling him

15 that he had knowledge of improprieties in Mexico?

16 A No.

17 MR. GRUTMAN: I'll move again to strike that,

18 your Honor.

19 THE COURT: Strike it.

20 MR. NATHAN: I submit that the lack of a conver-

21 sation to show lack of knowledge is relevant, your Honor.

22 THE COURT: Strike it.

23 Q Did there come a time, Mr. Nichols, when you

24 discussed with the defendant, Mr. Rosenstiel, the possibility

25 of his changing his domicile?

1 zpl9 Nichols-direct 1124

2 A Yes.

3 Q When did that first conversation take place?

4 A I think it was in the spring or early summer of
5 1964.

6 Q What did he say to you about this subject?

7 Perhaps you ought to tell where this conversation
8 took place.

9 A Well, the conversation -- I can't say with certain-
10 ty whether it was up here or whether it was in Florida
11 because I was in Florida with him in late May and in early
12 June and -- but at any rate, there were a series of circum-
13 stances. He didn't particularly like New York.

14 THE COURT: Here we want the conversation that
15 you had or conversations and you can give us the substance
16 of them, what he said to you on this subject.

17 THE WITNESS: He claimed about -- he didn't like
18 New York --

19 MR. GRUTMAN: My objection, I take it, your
20 Honor, is noted consistently.

21 THE COURT: Yes. That is understood. The
22 objection is overruled for the same reasons I permitted
23 prior conversations on the intention of the defendant
24 relative to matters of domicile.

25 MR. GRUTMAN: I have a continuing objection to

1 zp20

Nichols-direct

1125

2 all of that without the necessity of objecting to each
3 question?

4 THE COURT: I would suggest, with reference to
5 what follows, you have your continuing objection.

6 However, if we get off to another subject, please
7 rise then.

8 MR. GRUTMAN: Yes, of course, your Honor.

9 He didn't particularly like New York.

10 A A He didn't like New York. He was tired. He
11 wanted to sell the business. He stated he wanted to spend
12 more time on his boat. He wanted to be free to fish.
13 He was disgusted with developments in Connecticut. He had
14 had trouble with the city fathers there and then he was
15 weary of the protracted litigation growing out of this case
16 and he wanted to get out from under. Business pressures,
17 the pressures in Connecticut and the pressures of litigation.
18 That, in essence.

19 Do you know of any steps that the defendant took
20 positively to change his domicile?

21 A Yes.

22 Q Will you try to do this chronologically. What
23 active, as we both know, what overt acts did the defendant
24 perform in connection with his change of domicile?

25 A I think one of the first steps was to consult

1 zp21

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1126

2 Florida counsel on a domicile in Florida. And then --

3 THE COURT: Were you present when he discussed
4 these matters with counsel in Florida?

5 THE WITNESS: As a matter of fact I made the
6 appointment for the counsel and talked to counsel myself.
7 I was present when discussions arose.

8 Q When did that take place?

9 A That would -- I would fix the time as probable
10 June of 1964 and there were several discussions during that
11 period.

12 Q Taking you down to 1965 --

13 THE COURT: Excuse me. Did he do anything more in
14 1964; before we get to 1965, to change his domicile as far
15 as you know?

16 THE WITNESS: Well, in his own mind --

17 THE COURT: Not in his own mind. Did he take
18 any steps? Did he do anything?

19 THE WITNESS: I heard him tell different people
20 that he was now a resident of Florida, but coming to '65,
21 perhaps one of the first proclamations to the world was the
22 letter that he sent to the Governor of Florida.

23 Q Were you present when that letter was prepared?

24 A Yes.

25 Q I show you a document which has been exhibited to

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original and labeled Joint Exhibit II-1, and I ask you whether you know what that document is?

A This was the letter that was sent to the Governor.

Q What is that piece of paper actually?

A This is a Xerox copy.

Q Of what?

A Of the original.

Q Well, do you see the signature, do you recognize the signature on that?

A I do. That's Mr. Rosenstiel's signature.

Q Is that a copy of the original letter from the Governor's files?

A No, it's not from the Governor's files. It's from Mr. Rosenstiel's files. Their practice was to type an original and when they were sending copies out, Mr. Rosenstiel would sign the original, they would make Xerox copies and Xerox copies would be sent out and a Xerox copy would be kept as a file copy.

Q Did you actually see Mr. Rosenstiel sign that letter?

A No, I did not --

MR. GRUTMAN: I have no objection on the authenticity principle, your Honor. I have a load of other

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10:00 AM

I don't have a specific recollection that I saw him sign it. I know that this was the letter. I know he did sign it. I know that this is his signature.

THE COURT: You have seen him sign his name?

THE WITNESS: Hundreds of times.

THE COURT: You would recognize the signature?

THE WITNESS: Yes, sir.

THE COURT: In your opinion, is that his signature?

THE WITNESS: There is no question about it.

THE COURT: I don't think there is an issue here anyway, so let's move on to the next point, Mr. Nathan.

To save time, can you identify --

MR. GRUTMAN: I will concede that Governor Burns signed the reply letter.

THE COURT: You may proceed.

Q Have you ever seen Joint Exhibit II-2?

A Yes, I have seen this letter.

Q Where did you first see it?

A I saw it in Florida at about the time Mr. Rosenstiel, shortly after he received it.

MR. NATHAN: I offer as Plaintiff's Exhibit II-1, a Xerox copy of an office copy of a letter of Lewis

called on the chairman at his Purdy Street office. In fact, he came on two different days. I did not sit in on the conversation. The chairman told me about it immediately thereafter. Then that was followed by a telephone call from Mr. Riklies, an associate of Mr. Albert List.

Q Now, did you sit on any meeting with Mr. Riklies?

A The chairman met --

Q Well, just yes or no.

A Yes, I did.

Q Can you give us the date of that meeting?

THE COURT: Approximately.

Q Approximately?

A Well, it was in January of 1965, I think.

Q Are you refreshing your present recollection by referring to notes or are you testifying from --

A I couldn't read my notes without my glasses on. Now I've got my glasses on.

It was January 26.

THE COURT: You are holding something in your hand and you require that to refresh your recollection as to the date?

THE WITNESS: That's correct. That's right.

January 26, 1965 was the meeting with Riklies.

Q Is that or is that not your present refreshed

recollection as to when that meeting took place?

A That's correct.

MR. GRUTMAN: Your Honor, in the present state of the record, some pink papers in the hand of Mr. Nichols were referred to. He said he used them to refresh his recollection. I believe that they should now be marked for identification and I should have the right to look at them.

THE COURT: At this time, I am not going to require it. But I am going to permit you to inquire on that subject on cross examination, and I would ask you, Mr. Nichols, to hold the notes intact in your possession --

THE WITNESS: They are right here.

THE COURT: -- for cross examination, because I wouldn't want them to get lost during lunch, or whatever, and if counsel chooses to inquire relative to what you utilized to refresh your recollection on, I expect you to have those notes available to do so.

MR. GRUTMAN: I then take it your Honor will not allow me to look at them before I start the cross examination?

MR. NATHAN: We will make them available during the recess. We will make that particular page that has --

MR. GRUTMAN: Not that particular page.

1 THE COURT: No, I would suggest that if these
2 constitute a group of papers that were prepared at the same
3 time, counsel is undoubtedly going to cover the waterfront,
4 and you might just as well go along with getting it to him,
5 letting him look at it, and that's it. I would ask for
6 it if I were trial counsel, and under the circumstances
7 though they could be marked now, I have asked that they
8 be kept intact and I know Mr. Nichols will do that, but I
9 will ask you, much as is done with Grand Jury minutes
10 in a different context, to permit counsel to see these
11 notes during the recess.
12

13 MR. NATHAN: Your Honor, may the record show
14 that this is the first time that the witness referred to
15 any notes during this testimony.

16 THE COURT: Yes, and he referred to but one page,
17 and one entry which would indicate a meeting with Mr.
18 Rikliss, or his representative, in January of 1965. The
19 Court is aware of that.

20 Let me ask you just one question:

21 How many pages do the notes consist of?

22 THE WITNESS: I have to count them: 1, 2, 3, 4,
23 5.

24 THE COURT: Five pages. And do all five pages
25 relate in some way to the subject matter of this lawsuit?

2 THE WITNESS: Directly or indirectly.

3 THE COURT: All right, you can put them back.

4 THE WITNESS: A lot of them are irrelevant.

5 THE COURT: Well, that's another story.

6 THE WITNESS: But I have it for chronology.

7 THE COURT: If counsel wishes to see them, I
8 will obviously permit him to look at them, and ask you to
9 make them available.

10 THE WITNESS: I can assure you there is nothing
11 secret in here.

12 THE COURT: I would assume, as an experienced
13 investigator, you would not be coming to court with
14 matters and materials which you would not want people to
15 see.

16 Let's proceed with the matter at hand, Mr. Nathan.
17 I am just noting the time, and I am not here to rush you,
18 and certainly not to rush the direct or cross examination.
19 I wonder if we might be able to finish the direct examina-
20 tion by the time of luncheon recess.

21 MR. NATHAN: I should think so, your Honor.

22 THE COURT: Fine, let's proceed then.

23 BY MR. NATHAN:

24 Q What is your present recollection as to when the
25 meeting with Rikliss took place?

1 A January 26, 1965.

2 Q Was it with Mr. Rikliss personally or a
3 representative?

4 A The meeting was with Mr. Rikliss and Mr. Rosen-
5 stiel. They were together, and as the meeting concluded,
6 Mr. Rosenstiel called me into the meeting and I met Rikliss
7 for the first time and he reviewed the essence of their
8 discussion.

9 Q Now, without looking at any notes, do you recall
10 any other negotiations specifically, any meetings between
11 January 26, 1965 and let's say March of 1968?

12 A Yes.

13 Q How many other meetings do you recall without
14 refreshing your recollection?

15 A I recall at least three right offhand.

16 Q And could you name some of the other individuals
17 or entities that were interested?

18 A There was a series of discussions with 9-- do
19 you want the name of the company?

20 Q Yes.

21 A Lorillard Tobacco Company. And those discussions
22 went to the point where there was a basic agreement in
23 principle and culminated in a dinner meeting with the
24 executive officers of Lorillard and the executive officers
25

13

of Schenley, and then they got down to the nitty-gritty of contracts, details and the like, and the Schenley board in July of that year declined to proceed further.

Q July of what year?

A '67.

Q Now, do you know when Mr. Rosenstiel finally did sell all of his stock in Schenley Industries?

A Yes, I do.

Q When?

A It was in March of 1968.

Q Mr. Nichols, do you know who Meyer Lansky is?

Yes or no.

A Yes.

Q Was he ever associated with Mr. Rosenstiel in any business?

A No.

Q Was he associated with Mr. Rosenstiel in any way?

A No.

Q Did you ever see Mr. Lansky in the company of Mr. Rosenstiel?

A No.

Q Do you know who Moe Dalitz is?

A Yes.

Q Is he associated in any way with Mr. Rosenstiel?

Q Do you maintain your relationship or your friendship, contact with Mr. Rosenstiel even in these days of your retirement?

A Yes. I testified to that this morning.

Q How often do you see him?

A Whenever I am in Miami. I saw him in January, December prior to that.

Q Do you speak to him on the telephone?

A Yes.

Q How frequently?

A Every two, three weeks. Something like that.

Q Do you discuss affairs of mutual interest in your telephone conversations?

A Since he has had a stroke I have inquired as to his personal condition and I have tried to have something cheerful to say to him. And he is not as talkative today as he used to be prior to the stroke.

Q But he can talk to you, can't he?

A But the conversations are short.

Q But he talks to you, you understand him?

A Yes.

Q And he answers you by making logical responses, correct?

A Yes.

gp22

to the question of whether you could have a felony in an information and in a criminal court and eventually there was left open the question of whether the charge constituted felony or misdemeanor. The Court looked that one up and found that the charge at least was a misdemeanor, and I made some note of that. I figured to take judicial notice of it, and I now will reduce that to Attempt, and make that a Class B misdemeanor, and the Court will take further note of that, and I commend both of you on your thoroughness.

You may proceed.

MR. GRUTMAN: The fourth stipulation with Mr. Nathan is that there is no provision for plaintiff, Susan Rosenthal, in Lewis S. Rosenthal's current last will and testament.

There will be one additional stipulation:

Our Standard & Poor's service on Schenley has not been up to date, so I have asked to borrow it from somebody else. I hope by tomorrow morning to be able to show Mr. Nathan what those figures are on the Schenley stock from November, 1956, until November of 1968. We will submit the photocopy.

MR. NATHAN: It might be more convenient for the Court if you were to make it^a computation, so that the

presented with new figures today. I am not aware of anything in the agreement which would have made her entitled to the cash dividends even if the chairman had retained the stock and which the undisputed record shows he did not.

However, to save time, we will go over with Mr. Grutman this computation at a subsequent date and make some kind of a joint submission, either of an agreed computation or of our separate computations.

THE COURT: I should like to have an agreement on the fact of the matter, and I recognize and accept your position that from your point of view this is irrelevant, but so there is no dispute as to matters which I think are factually provable to a certainty, I would like to have that anyway with that reservation.

MR. NATHAN: Certainly, your Honor.

THE COURT: Let's receive it subject to its being corrected or supplemented.

MR. GRUTMAN: That is the way I am offering it, your Honor.

(Plaintiff's Exhibit 31 was received in evidence.)

MR. NATHAN: Your Honor, I take it that Mr. Grutman, who indicated an interest in the passports for some week and a half, has decided not to produce them.

Because of the amount of reference to them, and because they do have some relevance to this proceeding, I would like to introduce them as a defendant's exhibit, as one exhibit, if I may. The most recent passport is the one dated June 14 -- well, now, I better find the date.

I would submit that these are the three most recent passports, your Honor. They have been exchanged and viewed by counsel, and I would like to offer them as one exhibit.

THE COURT: Mr. Grutman called for them, they are here in court, they have been referred to a number of times.

Any objection?

MR. GRUTMAN: No, none at all, your Honor, and I won't belabor the point.

(Defendant's Exhibit Q was received in evidence.)

THE COURT: They are received in evidence with no objection, three passports. Are they consecutive?

MR. NATHAN: They are consecutive and the prior two are cancelled. The most recent one, I believe, has expired.

THE COURT: When was the earliest one issued?

MR. NATHAN: Do you have the letter?

THE COURT: I can read it from the first page.

MR. NATHAN: The issue date is February 4, 1963.

1
2 THE COURT: I have one here with an address listed
3 which seems to be a late 1950 passport.

4 MR. GRUTMAN: The address, your Honor, I believe
5 would be on the inside of the front jacket.

6 THE COURT: It is. This would appear to be
7 the one which I am holding now, No. 5754754, which relates
8 to a trip to Europe in 1956, October. So this would cover
9 that period.

10 MR. NATHAN: Your Honor, I would call your
11 attention, if you will turn the first page, you will see a
12 mark on the right-hand side called "issue date". I
13 believe you have the first one.

14 THE COURT: Yes, indeed. Yes, the one I have,
15 the number of which I have just given, is one which was
16 issued on July 26, 1956.

17 MR. NATHAN: The next one is issued on February
18 4, 1963, and the final one on June 11, 1968.

19 THE COURT: Could I see the second one. I want
20 to see - that is a period of some 7 years between passports
21 so that the '56 passport would have expired. This is '63.
22 That is listed as a renewal, so I have to assume that one
23 passport is missing from the sequence, because this is a
24 renewal.

25 MR. GRUTMAN: That is assuming that he had a

1 passport in that period, your Honor.

2 THE COURT: Otherwise, I don't think they show
3 the word "renewal". I will look at it quickly.

4 MR. GRUTMAN: I think, your Honor, the record can
5 reflect that two of the passports show a listed address for
6 Mr. Rosenstiel in either New York or Connecticut, and that
7 the most recent passport lists an address in Florida.

8 Is that correct, Mr. Nathan?

9 MR. NATHAN: That is correct, your Honor. They
10 speak for themselves.

11 THE COURT: The 1956 passport, which is the
12 earliest, has written on the inside left front cover,
13 "Bearer's address in the United States: North Street,
14 Greenwich, Connecticut."

15 The passport issued February 4, 1963 has "Bearer's
16 address in the United States: 1290 Avenue of the Americas,
17 New York 19, N.Y." It then has "North Street, Greenwich,
18 Connecticut," written in at the side, crossed out, and then
19 has "1350 West 29, Mi. Beach, Fla."

20 MR. GRUTMAN: Your Honor, is that the most
21 recent passport?

22 THE COURT: No. The last passport, the third one
23 issued June 11, 1968, which would still be current until
24 June 11 of this year, has the address 1350 West 29 Street,
25

1 me-8
2 Miami Beach, Fla. on the inside ledge.

3 MR. GRUTMAN: Your Honor, if you would be so
4 good to look at the Custom's stamps at that most recent
5 passport which you have in your hand, I would like the
6 Court to observe that none of them indicate that there were
7 arrivals at Miami Beach, Florida; they are all in New York,
8 although Miami Beach has an international airport.

9 THE COURT: May I say all relate to two entries
10 both in 1968, both at New York, one on June 14, 1968, the
11 other October 24, 1968.

12 MR. NATHAN: Your Honor, we do represent that
13 these are the latest three passports. There are no other
14 passports in that period.

15 THE COURT: All right. But as I said, there
16 seemed to be a gap -- if I am wrong about that -- a '63
17 passport would have expired in five years and this one was
18 June of '68. But I am not going to concern myself with the
19 gaps. Your representation is that these are all that exist
20 and these are all that I have before me.

21 MR. GRUTMAN: Very well.

22 THE COURT: I think the record is complete on that.

23 Mr. Nathan, if you want to take back these
24 passports, they are Q in evidence.

25 MR. NATHAN: Thank you, your Honor.

DEFENDANT'S EXHIBIT D -
TRANSCRIPT OF RECORD ON
FILE IN CRIMINAL COURT

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S.D. OF N.Y.

D

CRIMINAL COURT OF THE
CITY OF NEW YORK

Part RM 450, County of NY

TRANSCRIPT OF RECORD

No 75737

Docket No. B 3241 19 71

THE PEOPLE OF THE STATE OF NEW YORK

vs.

SUSAN ROSENSTEIL
NAME AGE

ADDRESS

CITY STATE

210.05 P.L.
OFFENSE

2/4/71
DATE OF OFFENSE

P.G. TO 110/210.05 UNDER 1ST
COUNT TO COVER.
15.00 OR 30 DAYS - FINE PAID
DISPOSITION

10/13/71
DATE OF DISPOSITION

233
CRIMINAL COURT PART COUNTY

LARIG-
JUDGE

I hereby certify that this is a true transcript of
record on file in the Criminal Court.

DATE 4/25 19 73
James Harold
COURT CLERK

Form No. CRC 225.1-50M sets 71088 (72) 346

DEFENDANT'S EXHIBIT E -
INFORMATION FILED
IN CRIMINAL COURT

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

against

SUSAN ROSENSTIEL,

Defendant.

Be it Remembered that I, FRANK S. HOGAN,
the District Attorney of the County of New York, by
this information, accuse the above-mentioned defendant
of the CRIME OF PERJURY IN THE THIRD DEGREE, committed
as follows:

The said defendant, on or about March 30,
1970, in the County of New York, was duly sworn as a
witness at an examination before trial conducted at
the Supreme Court, 60 Centre Street, City, County
and State of New York, by William Blitz, who was duly
authorized by law to administer the oath, and there-
after said defendant testified under said oath that
she did not sign a memorandum dated May 15, 1969.

In fact, said testimony was false, as said
defendant well knew, in that she did sign said
memorandum.

DEFENDANT'S EXHIBIT E -
INFORMATION FILED
IN CRIMINAL COURT

SECOND COUNT

AND I, THE DISTRICT ATTORNEY AFORESAID,
by this information, further accuse the said defendant of the Crime of PERJURY IN THE THIRD DEGREE, committed as follows:

The said defendant, on or about March 30, 1970, in the County of New York, was duly sworn as a witness at an examination before trial conducted at the Supreme Court, 60 Centre Street, City, County and State of New York, by William Blitz, who was duly authorized by law to administer said oath, and thereafter said defendant testified under said oath that she did not sign a memorandum dated May 21, 1969.

In fact, said testimony was false, as said defendant well knew, in that she did sign said memorandum.

THIRD COUNT

AND I, THE DISTRICT ATTORNEY AFORESAID,
by this information, further accuse the said defendant of the Crime of PERJURY IN THE THIRD DEGREE, committed as follows:

DEFENDANT'S EXHIBIT E -
INFORMATION FILED
IN CRIMINAL COURT

The said defendant, on or about September 2, 1970, in the County of New York, having previously been duly sworn as a witness at an examination before trial conducted at the Supreme Court, 60 Centre Street, City, County and State of New York, on March 30, 1970, by William Blitz, who was duly authorized by law to administer the oath and said examination having been adjourned to September 2, 1970, at the law offices of Messrs. Otterberg, Steindler, Houston and Rosen, 230 Park Avenue, City, County and State of New York, said defendant gave further testimony under said oath that she had acquired no other jewelry belonging to either Roland Hartman or Hartman Galleries or Roland Hartman Incorporated except two pieces of jewelry described in a memorandum dated June 23, 1969.

In fact, said testimony was false, as said defendant well knew, in that she had acquired other jewelry in addition to the two pieces of jewelry described in the above-mentioned memorandum dated June 23, 1969.

FRANK S. HOGAN,
District Attorney.

PLAINTIFF'S EXHIBIT 14

1 IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT

2 IN AND FOR DADE COUNTY, FLORIDA . IN CHANCERY

3 NO. 67-4681

4
5 LEWIS S. ROSENSTIEL,)

6 Plaintiff,)

7 -vs-)

8 SUSAN L. ROSENSTIEL,)

9 Defendant.)

10 _____)

11

12 Transcript of proceedings had and testimony
13 taken in the above-entitled cause before the Hon. John J. Kehoe,
14 Circuit Judge, in Chambers, Dade County Courthouse, Miami,
15 Florida, on Friday, May 12, 1967.

16

17 APPEARANCES:

18 LAW OFFICES OF JOHN W. PRUNTY (By Mr. John
19 W. Prunty), 302 Ainsley Building, Miami, Florida,
on behalf of the Plaintiff.

20 (No appearance on behalf of the Defendant.)

21

22

23

24

25

26

FILED FOR RECORD
'67 May 17 PM 3:44
Leatherman
Clerk Circuit Court
Dade Co. Fla.

202a

PLAINTIFF'S EXHIBIT 14

I N D E X

Witness:	Direct:	Cross:	Redirect:	Recross:
ROSENSTIEL, LEWIS S.	2-6	--	--	--
SHERIDAN, RUTH	5	--	--	--
ROBERTS, SEYMOUR	11	--	--	--
JAHN, WALTER	14	--	--	--
BELGOROD, SAMUEL	18	--	--	--
DAUFMAN, MURRAY	19	--	--	--

1 THEREUPON:

2 LEWIS S. ROSENSTIEL

3 the plaintiff herein, having been first duly sworn, was exam-
4 ined and testified as follows:

5 DIRECT EXAMINATION

6 Q (By Mr. Prunty) Are you Mr. Lewis S. Rosenstiel,
7 the plaintiff in this action?

8 A Yes.

9 Q Where do you reside?

10 A 1350 West 29th Street.

11 Q What city?

12 A Miami Beach.

13 Q Do you own this property, sir?

14 A Yes.

15 Q How long have you resided on this property?

16 A Eight to ten years.

17 Q Are you now residing permanently in Dade County,
18 Florida?

19 A Yes, I am.

20 Q Is this the deed to your property?

21 A Yes.

22 MR PRUNTY: I would like to offer this in evi-
23 dence.

24 THE COURT: Plaintiff's Exhibit No. 1

25 Q (By Mr. Prunty) When did you officially declare
26 yourself a resident of Dade County, Florida?

1 A '65, early '65.

2 Q I show you a certified copy of Declaration of
3 Domicile, and ask you if that was filed by you, and is that
4 your residence address as of January, 1965?

5 A Yes, sir.

6 MR. PRUNTY: I would like to offer this in
7 evidence.

8 THE COURT: Plaintiff's Exhibit No. 2

9 Q (By Mr. Prunty) The home which you have describ-
10 ed, 1350 West 29th Street, Miami Beach, do you keep your personal
11 effects, clothes and so forth there?

12 A Yes.

13 Q Is that your principal place of residence?

14 A Yes, that's my home.

15 Q Have you resided continuously in Dade County,
16 Florida, except for occasional business trips during the years
17 1965 and '66?

18 A The better portion of the time.

19 Q What is your business, sir?

20 A Executive.

21 Q Do you maintain an office for your business in
22 Dade County?

23 A Yes, sir.

24 Q Is this office located at 1900 Purdy Avenue?

25 A Yes, sir.

26 Q Do you operate your business from this office?

1 A As much as possible.

2 Q Do you intend to remain permanently in Dade
3 County, Florida?

4 A Yes.

5 Q In this business office, do you have meetings
6 of members of your company there?

7 A Yes, including board meetings from time to time.

8 Q Have you in 1966 testified under oath in a pro-
9 ceeding in New York that you are a resident of Dade County,
10 Florida?

11 A Yes. I do not remember the date but I do remem-
12 ber testifying.

13 Q In October, in the Supreme Court of the County
14 of New York, you remember testifying but you do not remember
15 the date?

16 A That's right.

17 Q Do you own a boat in this area, sir?

18 A Yes.

19 Q Is this a copy of the bill of sale for your
20 investment?

21 A Yes.

22 Q Is it registered in Florida?

23 A Yes, it is.

24 MR. PRUNTY: I would like to offer this.

25 THE COURT: Plaintiff's Exhibit No. 3.

26 Q (By Mr. Prunty) Is this a picture of the stern

1 of your vessel showing a Miami Beach registration?

2 A Yes.

3 MR. PRUNTY: I will offer this in evidence.

4 THE COURT: Plaintiff's Exhibit No. 4.

5 Q (By Mr. Prunty) When and where were you married
6 to the defendant, Susan L. Rosenstiel?

7 A Approximately --

8 MR. PRUNTY: May I interrupt for a moment?

9 This lady is a Deputy Clerk from the Tax Assessor;s Office and
10 has a document I would like to offer into evidence. If I might
11 interrupt to examine her then she can go back to her duties.

12 THE COURT: All right.

13 THEREUPON:

14 RUTH SHERIDAN

15 was called as a witness on behalf of the plaintiff and, having
16 been first duly sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 Q (By Mr. Prunty) Would you give your name and
19 official position?

20 A Ruth Sheridan, Assistant Supervisor of the Home-
21 stead Department.

22 Q In your official capacity, do you have accsss
23 to homestead application records?

24 A Yes.

25 Q Do you have a homestead application filed by
26 Lewis S. Rosenstiel?

1 A Yes, I do.

2 Q Do you have it with you?

3 A Yes.

4 Q Has this homestead application been recognized
5 and the exemption granted?

6 A Yes, it has.

7 MR. PRUNTY: We would like to offer this in evi-
8 dence.

9 THE WITNESS: I have a certified copy and would
10 ask permission to withdraw the original and substitute the copy.

11 THE COURT: All right. Plaintiff's Exhibit No. 5.

12 MR. PRUNTY: May this witness be excused, your
13 Honor?

14 THE COURT: Yes.

15 THEREUPON:

16 LEWIS S. ROSENSTIEL

17 having been previously sworn, was examined and testified further
18 as follows:

19 DIRECT EXAMINATION (Continued)

20 Q (By Mr. Prunty) In January of 1965, Mr. Rosen-
21 stiel, did you have occasion to write a communication to the
22 Governor of the State of Florida?

23 A Yes, sir.

24 Q Is this a true and correct copy of that communi-
25 cation?

26 A Yes, it is.

1 MR. PRUNTY: We would like to offer this in
2 evidence.

3 THE COURT: Plaintiff's Exhibit No. 6.

4 Q (By Mr. Prunty) I think I was about to ask you
5 when and where you married the defendant, Susan L. Rosenstiel.

6 A We were married about eleven years ago, I think.

7 Q The Complaint shows November 30, 1956. Would
8 that be correct sir?

9 A Yes.

10 Q Subsequent to your marriage, did you live togeth-
11 er for a period of time?

12 A Yes.

13 Q During the time that you lived together with
14 Susan L. Rosenstiel, did you conduct yourself as a proper hus-
15 band?

16 A I think I did.

17 Q Did you give her any cause for complaint?

18 A None that I know of.

19 Q Approximately when did you and the defendant
20 separate?

21 A Approximately five years later, when she locked
22 me out of the house.

23 Q That would be October of 1961?

24 A Yes, sir.

25 Q What caused the separation? You say you were
26 locked out?

27 A Yes.

1 Q You were locked out of your quarters?

2 A My house.

3 Q Who locked you out?

4 A She did.

5 Q When did the difficulties with the defendant
6 commence, and what did they generally consist of?

7 A The commenced rather shortly after the marriage
8 and increased in tempo right along.

9 Q Did she ever call you any vile and obscene names?

10 A Yes.

11 Q What did she call you?

12 A State this for the record?

13 Q Yes.

14 A Bootlegging son-of-a-bitch, lousy bastard,
15 goddamn thief. Not only to me but in front of my friends from
16 time to time.

17 Q Were these occurrences frequent or infrequent?

18 A Increasing in intensity right along.

19 Q How frequently would they occur?

20 A Sometimes as many as four or five times a week,
21 and usually in the middle of the night, after one o'clock, late
22 at night.

23 Q Did the defendant ever physically strike or
24 abuse you?

25 A Yes.

26 Q On one occasion or more than one occasion?

1 A Several occasions; one in particular was quite
2 vicious.

3 Q Briefly, what did that consist of?

4 A One night I left to go to the guest house and
5 she followed me out there. She picked up some loose stones of
6 gravel and started throwing it at me, which resulted in breaking
7 my glasses. She was screaming and yelling at the top of her
8 lungs. When I arrived at the guest house I had to call the law.

9 Q When was that?

10 A It is hard to place the date. I would say some-
11 where in the fifth year.

12 Q About the fifth year of your marriage?

13 A I would say so.

14 Q Did the defendant display any temper?

15 A An indescribable temper.

16 Q Did she have any cause or provocation for this
17 display of temper?

18 A None that I know of.

19 Q Did this occur frequently or infrequently?

20 A Always increasing in intensity, many times
21 steadily for a week; other times, four or five days.

22 Q How did she manifest this temper? What would
23 she do, generally?

24 A At first it would be preceded by demands for
25 money and threats of any kind. Second, whatever was handy she
26 would throw or whatever she could do to make life miserable.

1 She was always driving people away, friends of mine.

2 Q Did these outbursts of temper occur frequently?

3 A Very frequently and increased in tempo.

4 Q Did these acts on the part of the defendant have
5 any effect on your health?

6 A Yes.

7 Q In what way?

8 A High blood pressure, lack of sleep, all the
9 things that come along with aggravation of that kind. One time
10 it put me in the hospital in Paris. It was just continuous.

11 Q Has your health and attitude improved since you
12 have been separated from your wife?

13 A Yes, sir.

14 Q Do you think it is possible to effect a recon-
15 ciliation?

16 A Utterly impossible.

17 Q Has the defendant continued to use your name and
18 credit reputation?

19 A To the greatest degree.

20 Q She still orders things in your name and uses
21 your name and your reputation?

22 A Yes.

23 Q Do you have reason to believe that she will
24 continue to do that unless this Court enters some order against
25 it?

26 A Absolutely.

1 MR. PRUNTY: I have no further questions.

2 THE COURT: Were there any children born of
3 this marriage?

4 THE WITNESS: No, sir.

5 THEREUPON:

6 SEYMOUR ROBERTS

7 was called as a witness on behalf of the plaintiff and, having
8 been first duly sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 Q (By Mr. Prunty) You are Mr. Seymour Roberts?

11 A Yes, sir.

12 Q What is your business and where do you live?

13 A I live in New York. I am a CPA. I am Mr. Rosen-
14 stiel's personal comptroller.

15 Q Do you know where Mr. Rosenstiel resides?

16 A 1350 West 29th Street, Miami Beach, Florida.

17 Q Do you know whether or not he claims this as his
18 permanent residence?

19 A Yes, he claims this as his permanent residence.

20 Q When did Mr. Rosenstiel actually establish his
21 residence in Florida?

22 A About the second week in January, 1965.

23 Q What was done in connection with establishing
24 his residence?

25 A He moved all of his personal effects from Con-
26 necticut to Miami; all of his mementoes, pictures, clothing.

1 We notified the Postmaster in Greenwich, Connecticut to change
2 his mailing address. We closed his bank accounts up North and
3 opened bank accounts here in Miami Beach. We opened safety-
4 deposit vaults in Miami banks.

5 Q Does he have any automobiles?

6 A He has two automobiles registered in the State
7 of Florida, with Florida license tags.

8 Q Does he have a boat which is registered?

9 A He has a large vessel which is registered in
10 Miami.

11 Q Has he stated whether or not he intends to
12 remain here permanently?

13 A He told me he intends to remain here permanently,
14 in fact, he asked me if I would like to move down and establish
15 residency.

16 Q Did you handle the monetary account matters for
17 Mr. Rosenstiel during the time he was living with his wife?

18 A Yes.

19 Q Did you have any problems with the wife?

20 A Many problems.

21 Q Did the defendant obtain money surreptitiously
22 and improperly?

23 A She did.

24 Q In what way?

25 A Well, she forged his name to traveler's checks
26 in the amount of some twenty to thirty thousand dollars. She

1 forged his name to hotel pay-out slips for many thousands of
2 dollars in the various hotels that they lived in as they were
3 traveling throughout the country; namely, the Fontainebleau
4 Hotel here in Miami, the Sands Hotel in Las Vegas, the Beverly
5 Hills in Beverly Hills, California. She went to the Merchants
6 Grocery Store and abstracted cash to the extent of two thousand
7 dollars a month. She went to the fish store and the cheese
8 store and used to get periodic checks of one hundred dollars and
9 cash them. She got kickbacks from merchants -- by that I mean
10 she would make a purchase in the name of Mr. Rosenstiel, then
11 the merchants would give her credit in her own personal account.

12 Q Was it necessary for her to do this?

13 A It was absolutely unnecessary. She eventually
14 wound up with a four-thousand-dollar-a-month personal allowance
15 which we thought was sufficient and adequate for her needs.

16 Q Did she still continue to forge checks and
17 obtain money surreptitiously after she had this allowance?

18 A Yes. She once approached me and told me that
19 Mr. Rosenstiel wanted her to open up an account in a bank that
20 was run by a friend of theirs, and she said that I should give
21 her five thousand dollars. After I gave her the five thousand
22 dollars I reported it to Mr. Rosenstiel and he said he never
23 made such an authorization and I should go back and get the
24 money from her. I then went back to see her and she said, "Take
25 the money out of my allowance." So, I deducted the amount in
26 advance.

1 Q Is the defendant still obtaining funds on the
2 credit and reputation of Mr. Rosenstiel?

3 A I don't know if she is obtaining funds, but she
4 is purchasing merchandise and using Mr. Rosenstiel's name as
5 recently as last week. I received a bill from a merchant ask-
6 ing for reimbursement for purchases she made recently.

7 Q Do you have reason to believe she will continue
8 to do this?

9 A There is no doubt in my mind.

10 Q Do you know of an instance in which Mr. Rosen-
11 stiel was put in the hospital in Paris as the result of her
12 activity?

13 A I know of such an incident because I saw the
14 invoice from the hospital, and I was told about the details of
15 the incident by Mr. Harrington.

16 THEREUPON:

17 WALTER JAHN

18 was called as a witness on behalf of the plaintiff and, having
19 been first duly sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 Q (By Mr. Prunty) You are Mr. Walter Jahn?

22 A Yes, sir.

23 Q Where do you live, sir?

24 A 1080 West Paces Ferry Road, Northwest, Atlanta.

25 Q What is your business?

26 A I am Vice President of National Distributing
Company, Headquartered in Atlanta.

1 Q Do you know where the plaintiff, Mr. Rosenstiel,
2 is presently residing?

3 A Yes, I do, 1350 West 29th Street.

4 Q Do you know how long he has been a resident of
5 Dade County?

6 A I have known he has lived on and off here for
7 about ten years, but I understand he has permanently moved here
8 in the last one or two years.

9 Q Has he expressed any comment to you about his
10 desire to remain here as a permanent resident?

11 A Yes, he has. As late as two or three months ago
12 he told me he was going to live in Florida from now on.

13 Q Were you acquainted with the parties to this
14 action, both Mr. and Mrs. Rosenstiel?

15 A Yes, I was.

16 Q During the time that they were married and lived
17 together, did you visit them frequently?

18 A Very frequently.

19 Q Were you able to observe the conduct of the
20 defendant towards the plaintiff?

21 A Yes.

22 Q How did she treat him?

23 A Mrs. Rosenstiel was a very violent person.
24 I was attending a meeting at his home -- I believe it was in
25 1960 or '61 -- with an associate of mine, and she came slamming
26 down the stairs and she yelled at him, "Get these dirty sons-of-

1 bitches out of the room and get them the hell out of this
2 house." And he asked us in a quiet and subdued manner to
3 please leave.

4 Q Did she frequently call him vile and abusive
5 names?

6 A Yes, she did.

7 Q What did she call him?

8 A A dirty old son-of-a-bitch. She called him
9 an old bottlegging bastard.

10 Q Did this occur frequently?

11 A Yes.

12 Q How frequently?

13 A Mr. Rosenstiel talked to me on almost a day-to-
14 day basis, and this would occur an many as three times a week.

15 Q Would there be other people present when she
16 would lend herself to these outbursts?

17 A From time to time, yes.

18 Q Did she appear to have a violent temper?

19 A She had an extremely violent temper.

20 Q Did she display that frequently?

21 A Yes.

22 Q Did she ever say anything to you about having
23 employed counsel here during the term of this marriage?

24 A Yes, sir.

25 Q For what purpose?

26 A She told me -- this is many years prior --

1 that she had hired a lawyer called Louis Nizer to secure -- she
2 was preparing to secure divorce proceedings.

3 Q Did she make any comment about whether or not
4 she loved him or whether this marriage was a business transac-
5 tion?

6 A Her comment to me was that Nizer said to her,
7 the best thing she could do was stay married to him for as
8 long as she possible could because with the age difference
9 between these two people, longevity was the thing that counted
10 when it came to settlement.

11 Q Was this before they were having any problems
12 or difficulty?

13 A This was prior to my knowledge of them having
14 any difficulty.

15 Q Do you think it is possible for these people to
16 reconcile?

17 A No, sir.

18 Q Did these acts on the part of the defendant have
19 any effect on the plaintiff's health?

20 A She used to make him blow up like no man ever
21 blew. She would just tear him apart.

22 Q Has he felt better and has his attitude improved
23 since he has been separated?

24 A I find he is a lot more restful and a lot easier
25 to get along with.

26 Q Does he have an office here in Dade County?

1 A Yes.

2 Q Does he transact business from his office?

3 A Yes.

4 Q Have you been to his office to transact business
5 with him?

6 A Yes, sir.

7 THERUPON:

8 SAMUEL BELGOROD

9 was called as a witness on behalf of the plaintiff and, having
10 been first duly sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 Q (By Mr. Prunty) Would you state your name,
13 please?

14 A Samuel Belgorod.

15 Q What is your business or profession?

16 A Physician.

17 Q Have you had occasion to see, professionally, the
18 plaintiff, Lewis Rosenstiel from the period of 1956 to 1961?

19 A Yes, a number of times.

20 Q Were you aware of the fact that he was having
21 some difficulties and problems with his wife, the defendant?

22 A Yes.

23 Q Do you generally know what that consisted of?

24 A Yes.

25 Q Did this treatment of the plaintiff by the defen-
26 dant have any effect on his health?

1 A Yes, a marked effect. A number of times he had
2 a wide fluctuation in his blood pressure; sometimes going up to
3 almost 200. He would have headaches, pain in the back of his
4 neck, a little dizziness; and on one or two occasions some dif-
5 ficulty in vision, which might well be from that increase of
6 pressure.

7 Q Since he has been separated from the defendant,
8 has his health and attitude improved?

9 A I would say remarkably.

10 Q Do you know where the plaintiff is residing?

11 A Yes, Miami Beach right now.

12 Q Is this a permanent residence?

13 A As far as I know, yes.

14 MR. PRUNTY: I have no further questions.

15 THEREUPON:

16 MURRAY KAUFMAN

17 having been first duly sworn, was examined and testified as
18 follows:

19 DIRECT EXAMINATION

20 Q (By Mr. Prunty) Would you give us your name,
21 sir?

22 A Murray Kaufman.

23 Q Where do you reside?

24 A 16801 Northeast Sixth Avenue, North Miami Beach.

25 Q How long have you lived in Dade County, Florida?

26 A Approximately fourteen years.

 Q How long have you know Mr. Lewis S. Rosenstiel?

1 A Personally, I have known him thirteen years.

2 Q You have had occasion to work with him and
3 observe him during that time?

4 A Thirteen years.

5 Q Where is he presently residing?

6 A He lives at 1350 West 29th Street, Miami Beach.

7 Q During the last two years -- that would be 1965
8 through 1966 -- has he spent the majority of the time in Dade
9 County?

10 A Better than six months.

11 Q Does he have two automobiles down here?

12 A He has two.

13 Q Do they have Florida tags on them?

14 A Yes, they have.

15 Q Does he have an office here?

16 A Yes.

17 Q Does he conduct his business from that office?

18 A Yes, he does.

19 Q Is Mr. Rosenstiel one that does much business or
20 does he just handle the office as a place to go?

21 A He does much business.

22 Q At the place where he resides, does he have his
23 clothing and personal effects there?

24 A Yes, he has.

25 Q Has he state whether or not he intentds to
26 remain permanently in Dade County?

1 A Many times he has stated to me that he was
2 going to make his permanent residence in Dade County.

3 Q How many people does he have in the office
4 that he maintains in Dade County, Florida?

5 A I would say fifteen.

6 Q Do you work for Mr. Rosenstiel?

7 A I don't know how to answer that. I work for
8 him because as you know he is the head of the company, but I
9 work for an affiliate of Schenley.

10 Q You do not work directly under him?

11 A Not directly under him.

12 MR. PRUNTY: May I ask two questions of Mr.
13 Roberts?

14 THE COURT: All right.

15 MR. PRUNTY: What is Mr. Rosenstiel's approxi-
16 mate age?

17 MR. ROBERTS: He was born in 1891; July 21, 1891,
18 so he will be 76.

19 MR. PRUNTY: Do you know the approximate age of
20 the defendant?

21 MR. ROBERTS: Susy must be in her forties.

22 MR. PRUNTY: That is all I have.

23 THE COURT: Do you have your decree?

24 MR. PRUNTY: Yes, sir.

25 This is the usual decree with one exception.

26 There has been added a paragraph calling for an injunction

1 against the defendant from the use of Mr. Rosenstiel's name,
2 credit and reputation. This has been going on for some time
3 and we feel that we made a sufficient showing to the extent
4 that it can be enforced. I would like to urge you for it to
5 be entered.

6 THE COURT: It will be pretty hard for me to
7 enforce it while she is in New York.

8 (Thereupon, the hearing was concluded.)
9

10 CERTIFICATE
11 67-4681

12 STATE OF FLORIDA)
13 COUNTY OF DADE)

14 I, the undersigned, hereby certify that the foregoing
15 transcript, pages 1 through 22, is a true and correct transcript
16 of my stenographic notes of the proceedings had and testimony
17 taken in said cause before the Hon. John J. Kehoe, Circuit Judge,
18 at the time and place stated in the caption thereof.

19 IN WITNESS WHEREOF I hereunto set my hand this 17th
20 day of May, 1967.

21 s/ Patrick E. Cunningham
22 PATRICK E. CUNNINGHAM
23 Court Reporter
24
25
26

PLAINTIFF'S EXHIBIT 14

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA. IN CHANCERY.

No. 67-4681 - John J. Kehoe

LEWIS S. ROSENSTIEL,)

Plaintiff,)

-vs-)

SUSAN L. ROSENSTIEL,)

Defendant.)

_____)

Transcript of proceedings had and testimony
taken in the above-entitled cause before the Hon. John J. Kehoe,
Circuit Judge, in Chambers, Dade County Courthouse, Miami,
Florida, on Friday, May 12, 1967.

APPEARANCES:

LAW OFFICES OF JOHN W. PRUNTY (By Messrs.
John W. Prunty and Richard H. Olsen), 302
Ainsley Building, Miami, Florida, co-counsel
on behalf of the Plaintiff.

(No appearances on behalf of the Defendant.)

PLAINTIFF'S EXHIBIT 14.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT

IN AND FOR DADE COUNTY, FLORIDA. IN CHANCERY.

No. 67-4681 - John J. Kehoe

LEWIS S. ROSENSTIEL,)

Plaintiff,)

-VS-

SUSAN L. ROSENSTIEL,)

Defendant.)

CHANGES IN TESTIMONY

Page: Line:

9 8 "--I had to call the law" - should read "doctor"

9 11 "fifth year" should read "fourth year"

9 12 "fifth year" should read "fourth year"

The above-cited changes in testimony of Lewis S. Rosenstiel in the above-styled cause are directed by counsel for the Plaintiff, Mr. John W. Prunty, Mr. Richard H. Olson, and the Plaintiff, Lewis S. Rosenstiel.

IN WITNESS WHEREOF I hereunto set my hand this 26th
day of May, 1967.

s/ Patrick E. Cunningham
PATRICK E. CUNNINGHAM
Court Reporter

OPINION OF HON. ROBERT J. WARD, U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SUSAN L. ROSENSTIEL, :
 :
 Plaintiff, :
 :
 -against- : OPINION
LEWIS S. ROSENSTIEL, : 67 Civ. 1883
 :
 Defendant. :
-----x

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WARD, D. J.

This is an action to determine the continued validity of an antenuptial agreement executed by the parties to this action in light of the subsequent divorce obtained by defendant Lewis S. Rosenstiel in an ex parte Florida proceeding. Plaintiff Susan L. Rosenstiel seeks to enforce a provision of the agreement, as amended, which made certain financial provision for her in lieu of her statutory right of inheritance. She also seeks to impose a constructive trust on the cash proceeds of a sale of stock by defendant which she contends form the property she will be entitled to under the agreement. She also seeks damages for defendant's allegedly tortious course of conduct as well as counsel fees. In order to place this dispute in contest, a review of pertinent facts and prior legal proceedings will be useful.

Susan and Lewis Rosenstiel were married in New York City on November 30, 1956. This was plaintiff's second marriage, her prior marriage having been dissolved by a decree of absolute divorce in Mexico on October 2, 1954. The day before their marriage plaintiff and defendant entered into the aforementioned antenuptial agreement which, as

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later amended, provided that it should be interpreted and governed by the laws of New York and that plaintiff's right to receive any benefits thereunder was subject to defeasance in the event she predeceased the defendant or in the event that they were "divorced or separated by decree of a court of competent jurisdiction or separated by written agreement. . . , " prior to the death of defendant.

After a period of extreme acrimony, the parties separated in October, 1961. Plaintiff remained in their home in New York; defendant went to their home in Greenwich, Connecticut. On November 9, 1961, defendant instituted an action against plaintiff in Connecticut (a) for an annulment on the ground that he was fraudulently induced to marry her, and (b) for a divorce on the grounds of plaintiff's cruel and inhuman treatment of defendant. Thereafter, on January 3, 1962, defendant amended his complaint in the Connecticut action to include as an additional ground for annulment that plaintiff's prior Mexican divorce from her first husband was void in that the Mexican court was without jurisdiction. Plaintiff appeared specially in this Connecticut action, claiming that her husband was not a domiciliary of that State and that the marital res was not located there.

On or about November 15, 1961, plaintiff brought an action in the Supreme Court of the State of New York for New York County seeking to enjoin defendant from prosecuting

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his Connecticut action on the ground that defendant's claim to be a domiciliary of the State of Connecticut was false and fraudulent. Plaintiff's motion in the New York action for a temporary injunction pending determination of her action for a permanent injunction was denied. Rosenstiel v. Rosenstiel, 32 Misc. 2d 542, 225 N.Y.S.2d 905 (Sup. Ct. N.Y. Co.), aff'd, 15 App. Div. 2d 880, 225 N.Y.S.2d 912 (1st Dep't), appeal denied, 15 App. Div. 2d 904, 225 N.Y.S.2d 915, motion denied, 11 N.Y.2d 882, 182 N.E.2d 407, 227 N.Y.S.2d 919 (1962). Thereafter on April 26, 1962, defendant discontinued the Connecticut action; and on that same day instituted an action for annulment in the Supreme Court of New York for New York County alleging as the basis of that court's jurisdiction that Mrs. Rosenstiel was a resident of New York, as claimed in her New York injunction action.

Defendant herein was granted an annulment after trial on the ground that plaintiff's Mexican divorce decree dated October 2, 1954, entered upon the personal appearance of plaintiff's then-husband and the appearance of plaintiff by Mexican counsel, was void. Rosenstiel v. Rosenstiel, 43 Misc. 2d 462, 251 N.Y.S.2d 565 (Sup. Ct. N.Y. Co. 1964). The judgment of the New York court expressly reserved for

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determination plaintiff's right to support and maintenance and to counsel fees. The annulment was vacated by the Appellate Division, 21 App. Div. 2d 635, 253 N.Y.S.2d 206 (1st Dep't 1964); the New York Court of Appeals affirmed, 16 N.Y.2d 64, 209 N.E.2d 709, 262 N.Y.S.2d 86 (1965); and a petition for a writ of certiorari to the Supreme Court was denied, 384 U.S. 971 (1966).

Shortly prior to denial of certiorari, plaintiff moved in the New York Supreme Court, pursuant to both the reservation in the judgment in the annulment action and N.Y. Domestic Relations Law §§ 236 and 237 (McKinney 1964), for a determination of her right to and the amount of her support and maintenance and for counsel fees. Her motion was granted, and the trial was resumed for such purpose during the period September 13 to October 20, 1966, before Mr. Justice Helman. At that trial, defendant asserted as a defense to plaintiff's claim the charge that plaintiff had been guilty of cruel and inhuman treatment and abandonment; and the testimony of witnesses was submitted in support of this charge. Section 236 of the N.Y. Domestic Relations Law (McKinney 1964) expressly authorizes the court to require a husband to provide suitably for the support of his wife, notwithstanding her misconduct "unless such misconduct would itself constitute grounds for separation or

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divorce." By decision of November 30, 1966, the trial court found that plaintiff had not been guilty of misconduct sufficient to sustain an action for divorce or separation against her and accordingly awarded her support and maintenance and counsel fees. Rosenstiel v. Rosenstiel, N.Y.L.J., Dec. 1, 1966, p. 17, col. 7 (Sup. Ct. N.Y. Co. 1966). On June 6, 1967, the Appellate Division modified the award but expressly affirmed the trial court's finding with respect to the wife's misconduct. 28 App. Div. 2d 651, 280 N.Y.S.2d 624 (1st Dep't 1967). On November 29, 1967, the Appellate Division's Order was affirmed without opinion by the New York Court of Appeals. 20 N.Y.2d 925, 233 N.E. 2d 292, 286 N.Y.S.2d 278 (1967).

On or about March 24, 1967, and while this appeal of the support decree was pending, defendant instituted the Florida divorce action alleging that his wife had "been guilty of extreme cruelty" to him and had "also been guilty of habitually indulging in a violent and ungovernable temper." Jurisdiction was based on defendant's assertion of his domicile in Florida. Plaintiff claims that the grounds raised in this divorce proceeding were identical to those previously tried and determined in her favor in the New York action. However, after she was constructively served by publication in the Florida action, plaintiff did not appear and defaulted therein. She offers this Court two reasons for

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her default in the Florida proceeding. The first is that if she appeared in the Florida action, she would risk modification of the support award granted in New York. See Lynn v. Lynn, 302 N.Y. 193, 97 N.E.2d 748, cert. denied, 342 U.S. 849 (1951). The second reason advanced by plaintiff is that she was afraid that if she went to Florida her husband would utilize his alleged "vast under world connections," concerning the existence of which plaintiff is totally convinced, to cause her physical harm. This aspect of plaintiff's testimony is so unsubstantiated and so totally incredible that the Court gives it no weight. Plaintiff claims that the risks precluded her from exercising her right to invoke the Full Faith and Credit Clause of the United States Constitution, Art. 4, §1, in the Florida action.

Plaintiff, not wanting to appear in the Florida action, returned to the New York Supreme Court seeking an injunction against defendant's prosecution of the Florida action. The injunction was denied for lack of jurisdiction. Rosenstiel v. Rosenstiel, 30758/1962 and 31198/1961 (Sup. Ct. N.Y. Co. April 21, 1967). She appealed to the Appellate Division and moved for an order restraining defendant from prosecuting the Florida divorce action pending the hearing and determination of her appeal, but the application for a

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stay was denied on May 4, 1967. See Rosenstiel v. Rosenstiel, 278 F. Supp. 794, 798 (S.D.N.Y. 1967). On the afternoon of that date, defendant's Florida counsel filed a Praecipe for Default or Decree Con Professo and a default against plaintiff was entered. On May 5, 1967, after consultation with the Florida trial judge, the morning of May 12, 1967, was set down as the date for a final divorce hearing. A Final Judgment of Divorce was obtained by defendant against plaintiff in the Florida action at 11:28 A.M. on that date. This Judgment, while filed on the date rendered, was not "entered" or "recorded" in the Circuit Court Minute Book until the following Monday - May 15, 1967.

In the meantime, at 4:25 P.M. on May 12, 1967, the day defendant obtained the Final Judgment of Divorce, a judge of this Court who was unaware of the Florida Judgment signed an ex parte order to show cause brought by plaintiff in this action which provided that defendant and all those acting on his behalf be "restrained from prosecuting, going forward or otherwise taking or procuring to be taken or entered - by default - any Judgment or Decree of Divorce against the plaintiff herein, in the defendant's pending action for a divorce instituted by him in the Circuit Court of the 11th Judicial Circuit of Florida, in and for Dade County, Florida, on or about March 24, 1967. . . ."

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At the hearing on the order to show cause and in plaintiff's supporting papers, plaintiff sought to convert the original motion for a prohibitory injunction, which had become moot, into a motion for a mandatory injunction requiring defendant to undo the acts already completed; plaintiff also moved to punish defendant and/or his attorneys, agents, or others acting on his behalf, for non-compliance with the temporary restraining order. Both motions were denied. Rosenstiel v. Rosenstiel, 278 F. Supp. 794 (S.D.N.Y. 1967) (Tenney, J.).

The Court turns first to the issue of the validity of defendant's ex parte Florida divorce. Plaintiff contends that defendant was not a bona fide domiciliary of Florida and that, therefore, the Florida court was without jurisdiction to grant defendant a divorce. She further contends that the decree was procured by fraud in that defendant did not apprise the Florida court of the prior proceedings in New York before Mr. Justice Helman.

The Supreme Court has held:

"Under our system of law, judicial power to grant a divorce - jurisdiction, strictly speaking - is founded on domicil. Bell v. Bell, 181 U.S. 175; Andrews v. Andrews, 188 U.S. 14. . . . The domicil of one spouse within a State gives power to that State, we have held, to dissolve a marriage wheresoever contracted. In view of Williams v. North Carolina, supra [317 U.S. 287 (1942)], the

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jurisdictional requirement of domicile is freed from confusing refinements about 'matrimonial domicile,' see Davis v. Davis, 305 U.S. 32, 41 and the like. . . ."
Williams v. North Carolina (II), 325 U.S. 226, 229-230 (1945).

But where domicile is lacking, the courts of a state are without jurisdiction to grant a divorce. Alton v. Alton, 207 F.2d 667 (3d Cir. 1953), cert. granted and then dismissed as moot, 347 U.S. 610 (1954). Furthermore, Williams (II) holds that the question of domicile in an ex parte divorce proceedings is open to collateral attack in a sister state; and upon a finding that domicile was lacking, the decree of divorce is not entitled to full faith and credit.

The creation and changing of one's domicile is a question of fact. Williams v. North Carolina (II), 325 U.S. 226 (1945); Matter of Newcomb, 192 N.Y. 238, 250, 84 N.E. 950, 954 (1908). Under the law of both Florida and New York, domicile consists of actual residence within a state with the intention of making that state one's permanent home or one's home for an indefinite period. E.g., Wade v. Wade, 93 Fla. 1004, 113 So. 374 (1927); Perez v. Perez, 164 So.2d 561 (Fla. D.C. of App., 1964); Carter v. Carter, 19 App. Div. 2d 513, 240 N.Y.S.2d 141 (1st Dep't 1963). Where a previous finding of domicile is subjected to collateral attack, "[t]he burden of undermining the verity which the [prior] decree[s] import rests heavily upon the assailant." Williams v. North Carolina (II), supra at 233-34.

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In the ordinary case, a finding of a change of domicile is readily apparent. A person gives up his old home and establishes a new one so that he has only one place of abode at any one time. But where, as here, a person maintains several households in different states, the determination is rendered more difficult. Obviously, those wealthy enough to have multiple residences have an equal right along with those less fortunate to change their domiciles. The effect of their wealth simply renders the factual determination that much more difficult. "In such circumstances the determination of domicile involves a comparison of the weight of the evidence, of the actual facts as to residence and defendant's real attitude and intention as disclosed by his entire course of conduct." Rosenstiel v. Rosenstiel, 32 Misc. 2d 542, 546, 225 N.Y.S.2d 905, 910 (Sup. Ct. N.Y. Co.), aff'd, 15 App. Div. 2d 880, 225 N.Y.S.2d 912 (1st Dep't), appeal denied, 15 App. Div.2d 904, 225 N.Y.S.2d 914 (1st Dep't 1962).

The Court finds, on balance, that defendant has established that he effected a bona fide change of domicile to Florida in January, 1964, although he retained ownership of his New York townhouse until 1968 and still owns the Connecticut property. As early as 1964, defendant told

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friends that he wanted to sell his business and move to Florida where he would have time to sail and fish. He expressed dissatisfaction with zoning decisions in Connecticut, unhappiness about his relationship with his family, and a general desire to get away from New York and Connecticut. In various sworn statements made in 1965, defendant listed Florida as his residence or "place of abode" which are in their contexts synonymous with domicile.

In January, 1965, defendant purchased a new yacht which he berthed in Florida. Contemporaneously, he began negotiations for the sale of his stock in Schenley Industries, Inc. ("Schenley"). This sale was finally consummated in 1968. At about the same time, defendant also transferred his bank accounts, with the exception of two small farm accounts, from Connecticut to Florida while retaining other accounts in California, Texas, and New York. He closed his safe deposit box in Connecticut, opened one in Florida, and removed to Florida all his securities except those which were being bought or sold or received as stock dividends. In April, 1965, defendant commenced negotiations for the sale of his New York City house which sale was consummated on January 26, 1968. In December, 1965, defendant began construction of a swimming pool on his Florida property.

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Since 1966, defendant has listed Florida as his domicile on official documents, except for vehicles which he previously owned and for which he did not transfer the registration to Florida until a year or two after 1965. Schenley, however, in its reports to the Alcohol and Tobacco Tax Division of the Treasury Department did not report a Florida address for defendant until December 20, 1967. On several of these reports filed by Schenley prior to December 20, 1967, both Connecticut and New York home addresses were listed for Mr. Rosenstiel which tends to indicate that the person preparing the report either was not concerned with domicile in the legal sense or had no idea of which of defendant's numerous residences was his legal domicile. These reports, therefore, have little or no probative value in refuting that defendant was a Florida domiciliary at the time he obtained his Florida divorce and that he has remained a domiciliary of that state up until the present time.

From 1965 through 1968, defendant spent most of his time in Florida. He spent approximately three months during the summer in Connecticut, returning to Florida at the end of the hurricane season in late September or October and remaining there until about June of the following year. He occasionally spent a winter week-end in Connecticut if he had been in New York, where Schenley's main office was located. Defendant

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apparently spent as little time as possible in New York consistent with his continuing duties as chairman of the board of Schenley.

After the sale of his interest in Schenley and of his New York City townhouse in 1968 and until the present, defendant has spent an even greater part of his time in Florida and very little time in New York. Although he has continued to spend summers in Connecticut, he has not been there during the winter months since 1968.

This evidence presents a picture of a man who, in fact, established actual residence in Florida as early as 1965 with the intent that it be permanent. He did everything possible to effect this change consistent with his continuing duties until 1968 as the chairman of the board of a major corporation. While it is true that much of what defendant did to effectuate the change consisted of formal acts, that is almost always the case when a person is effectuating a change of domicile. It has never been held nor has plaintiff suggested that in order to effect a change of domicile, a person can never again set foot in his former domicile. Defendant's retention of homes in other states including his former domicile has led the Court to scrutinize with utmost care his purported change of domicile, but it does not preclude a finding that such a change was, in fact, effectuated.

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Furthermore, defendant did not merely sojourn in Florida long enough to get a divorce in that jurisdiction so as to raise a presumption against his change of domicile. Indeed, defendant, relieved of his heavy business obligations, has spent even more time in Florida since 1968 - after obtaining his divorce from plaintiff.

Given defendant's actual change of residence coupled with his intent that it be permanent, his motives for such a change of domicile are immaterial. Milbank v. Milbank, 36 App. Div. 2d 292, 320 N.Y.S.2d 436 (1st Dep't), aff'd, 29 N.Y.2d 844, 277 N.E.2d 288, 327 N.Y.S.2d 856 (1971).

Plaintiff further argues that defendant's Florida divorce was procured by fraud and is, therefore, subject to collateral attack. In sum, plaintiff argues that defendant perpetrated a fraud upon the Florida court in failing to bring to that court's attention the prior findings of the New York court in the support action and in failing to take affirmative action in Florida after the entry of the restraining order by this Court. The latter argument was disposed of by Judge Tenney in his opinion on plaintiff's motion for a preliminary injunction:

"It is not disputed that the Florida divorce action proceeded to final judgment some five hours prior to the signing of the restraining order. The divorce decree was signed by the presiding judge and filed for the

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record at 11:28 A.M. The divorce decree was entered in the progress docket on Monday, May 15, 1967, and was immediately forwarded to a clerk to be recorded in the minute book. . . .

"Interpreting the restraining order strictly, defendant was restrained from taking any affirmative action to obtain the Florida divorce. By the time that defendant's counsel was made aware of such order, any affirmative action had already been completed. In short, I do not consider defendant's inaction to be a violation of the temporary restraining order. . . .

". . . It is perfectly obvious that counsel for defendant thought that once the divorce decree was filed nothing further was to be done and that any further recording steps would take place on that same day. It does not seem likely that when counsel were informed of the restraining order on the morning of May 13, 1967, they thought there was anything else they might do to comply with such order."
Rosenstiel v. Rosenstiel, 278 F. Su-p. 794,
803-04 (S.D.N.Y. 1967).

Thus, plaintiff's argument that the Florida judgment is void because obtained in defiance of injunctive restraint is refuted by Judge Tenney's opinion.

Plaintiff's argument that defendant's failure to bring the prior determination in the New York support action to the attention of the Florida court is fraudulent and subjects the Florida judgment to collateral attack in this Court is without merit. Even assuming that the same issues were

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tried in the New York support action and the Florida divorce action so that the doctrine of res judicate would or should have been applied by the Florida court had it had knowledge of the prior New York litigation, this Court lacks jurisdiction to nullify the Florida proceeding. It is well settled that such an attack must be raised as an affirmative defense or on direct appeal. Simons v. Miami Beach First National Bank, 157 So. 2d 199 (Fla. D.C. of App. 1963), aff'd 381 U.S. 81 (1965); Lynn v. Lynn, 302 N.Y. 193, 97 N.E.2d 748, cert. denied, 342 U.S. 849 (1951); Chenu v. Board of Trustees, Police Pension Fund, 12 App. Div. 2d 422, 212 N.Y.S.2d 818 (1st Dep't 1961), aff'd without opinion, 11 N.Y.2d 688, 180 N.E.2d 913, 225 N.Y.S.2d 760, modified, 11 N.Y.2d 765, 181 N.E.2d 716, 227 N.Y.S.2d 14, cert. denied, 370 U.S. 910 (1962). The law is also clear that where there are two inconsistent judgments of courts having jurisdiction, the later judgment controls in a third action. Treinies v. Sunshine Mining Co., 308 U.S. 66 (1939); Lynn v. Lynn, supra; Chenu, supra.

Chenu, supra, is directly in point. There, the wife obtained a decree of separation in New York based upon her husband's "cruel and inhuman treatment and abandonment." The husband thereafter changed his domicile to Florida and commenced a divorce action against his wife who was served

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by publication. The wife defaulted in the Florida proceedings, and the husband was awarded a divorce on the ground of "cruelty". In an action brought by the husband's second wife to have herself declared the widow, the motion by the first wife for declaratory relief invalidating the Florida divorce was dismissed. The court held that even if the husband had committed fraud in not properly advising the Florida court of the prior proceedings in New York, such fraud did not affect the jurisdiction of the Florida court, whose decree was entitled to full faith and credit. Res judicata, it was there held and is equally applicable here, is an affirmative defense which the first wife failed to plead in the Florida action and, thereby, waived.

Judge Botein, writing for a unanimous court, held:

"It is undisputed that Chenu had established a lawful domicile in Florida before bringing the divorce action and that service was effected properly on the nondomiciliary defendant by publication. The Florida judgment could be nullified by collateral attack in this State if there had been fraud in the purported establishment of residence by the decedent [herein defendant], or improper service upon defendant [herein plaintiff]. Given the ingredients of domicile and proper service, however, the Florida divorce decree is invulnerable to attack in this State, since there is no showing of fraud that vitiates its jurisdictional underpinning. [Citations omitted.]

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"It is well-settled law that 'the fraud for which a judgment can be impeached must be in some matter other than the issues in controversy in the action' (Crouse v. McVicker, 207 N.Y. 21d, 218, 100 N.E. 697, 698, 45 L.R.A., N.S., 1159). See also Frost v. Frost, 260 App. Div. 694, 23 N.Y.S.2d 754. It is no challenge to the jurisdiction of the Florida court that the decedent husband purportedly misrepresented the scope and effect of the New York separation decree, as a false presentation which distorts the thrust of a formal judgment of a sister state is in essence no different from any other type of perjury committed in the course of litigation. This was intrinsic fraud, which may not be attacked collaterally; and relief would have been available only in the original action (Fuhrman v. Fanroth, 254 N.Y. 479, 173 N.E. 685; Rivero v. Ordman, 277 App. Div. 231, 97 N.Y.S.2d 864)." 12 App. Div. 2d at 424, 212 N.Y.S.2d at 820.

Plaintiff's attempts to distinguish this case from Chenu are unpersuasive inasmuch as concealment of a prior judgment constitutes intrinsic fraud. Douropoulos v. Douropoulos, 67 Misc. 2d 518, 323 N.Y.S.2d 92 (Sup. Ct. Kings Co. 1971); DiRusso v. DiRusso, 55 Misc. 2d 839, 287 N.Y.S.2d 171 (Sup. Ct. Nassau Co. 1968). The Florida cases are in accord. Matsis v. Matsis, 155 Fla. 786, 21 So. 2d 545 (Fla. 1945); Simons v. Miami Beach First National Bank, supra. Apparently aware that this Court can only entertain a collateral attack on the Florida judgment if that judgment were obtained by "extrinsic" rather than "intrinsic fraud", plaintiff attempts to denominate defendant's lack of disclosure to the Florida court "extrinsic fraud". She does

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so by claiming that her default was actively procured and that all the inequities of an ex parte proceeding were then exploited by complete nondisclosure and deception. The evidence does not support plaintiff's contention that her default was actively procured. As noted above, plaintiff herein was properly served by publication in the Florida proceeding and chose not to appear. She feared that the substantial award of support granted to her by the New York courts might be modified. She also felt that her husband would cause her physical harm. Although there is little doubt in the Court's mind that plaintiff actually believed that she would be physically harmed, the Court finds no valid basis for her apprehension. Since there is no proof that defendant threatened her in any way - except as the result of litigation which he was within his rights in bringing - it cannot be said that he procured her absence. Even accepting as true plaintiff's account of the stormy events immediately following her separation from defendant, these events would have occurred about six years before the Florida action was instituted. There has been no evidence of any action in the intervening years which should reasonably have caused plaintiff to be put in fear for her physical safety. Since there is a failure of proof that plaintiff's

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default was actively procured by defendant, plaintiff has not sustained her burden of proving the existence of extrinsic fraud. The Florida decree of divorce is, therefore, not open to collateral attack.

Plaintiff further argues that the Florida judgment is also vulnerable to any attack permitted under Florida law. She argues that under Rule 1.540(b) of the Florida Rules of Civil Procedure,¹ a Florida decree is impeachable for intrinsic fraud either on motion or in a separate action such as the instant one. Assuming that this Court can, in effect, sit as a Florida court, it is clear that plaintiff misconceives the Florida Rule. Under the Florida Rule, a motion must be made in the same proceeding in which the judgment from which the moving party seeks relief was rendered. Alexander v. First National Bank of Titusville, 275 So. 2d 272, 273 (Fla. D.C. of App. 1973). Obviously, the instant action is not the same proceeding. Nor is this a matter in which the Florida courts would entertain an independent action based upon "fraud upon the court." Rule 1.540(b), Florida Rules of Civil Procedure. This phrase generally comports with the definition of extrinsic fraud. In Alexander v. First National Bank of Titusville, supra, plaintiff instituted an action to set

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"aside certain conveyances of real property claimed to have been fraudulently made for the purpose of defeating plaintiff's effort to collect a deficiency judgment which it had obtained against defendants in a prior foreclosure action. The final judgment of foreclosure was entered on 11 March 1970. The deficiency judgment was entered on 27 August 1970. The present action was instituted sometime prior to 12 November 1970.

"By counterclaim the defendants allege[d] that in the prior action the plaintiff misstated the amount of the indebtedness there involved by \$8,100.00 with the result that the final judgment of foreclosure and the deficiency judgment were erroneous and obtained by a fraud on the court."
275 So. 2d at 273.

In affirming the trial court's striking of this counterclaim, the District Court of Appeal stated:

"Without attempting a comprehensive definition of 'fraud on the court' it is our view that the facts alleged in the counterclaim do not qualify as such. In addition to the policy considerations mentioned above, these other factors move us to this conclusion: (a) the counterclaim does not allege a misrepresentation which misled the court (in the original action) as to its jurisdiction over the person of the defendant, the identification of the defendant, or the subject matter; and (b) neither does the counterclaim allege a misrepresentation which prevented the appellants from effectively presenting a defense in the original action based on the same facts they now desire to set before the court via the independent action. The 'fraud' to which the counterclaim speaks is in our view the type of fraud contemplated by subsection '(3)' of Rule 1.540(b), RCP, and should have been brought to the attention of the court by a motion filed in the original action - not by an independent action."
Alexander v. First National Bank of Titusville,
supra at 274.

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The same factors cited by the Alexander court are present here and require this Court, sitting as a Florida court, to refuse to entertain this action. See also, Simons v. Miami Beach First National Bank, supra, in which the court held that a husband's failure to disclose a prior New York separate maintenance decree in a Florida divorce action was not a fraud upon the court.

Thus, the Court concludes that defendant's Florida judgment of divorce is a valid judgment of a court of competent jurisdiction.

The antenuptial agreement, as amended on June 15, 1959, included a provision that

"upon condition that [plaintiff] survive [defendant] and upon further condition that at the time of [defendant's] death the said parties have not been divorced or separated by decree of a court of competent jurisdiction, or separated by written agreement," [emphasis added]

defendant was to bequeath to plaintiff a number of shares of Schenley stock equivalent to 25,000 shares issued and outstanding on November 29, 1956, or if defendant did not hold such shares at the time of his death, shares of stock received in exchange therefor, plus cash in an amount sufficient to make the value of the bequest not less than \$450,000. The agreement further provided that if neither

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Schenley shares nor securities or other property received in exchange therefor were owned by defendant at the time of his death, then plaintiff would receive cash or other property or both valued at \$450,000.

Plaintiff argues that even though the Florida divorce be found to be a valid judgment by a court of competent jurisdiction, it does not serve to terminate her rights under the antenuptial agreement because the divorce was procured by defendant's fraud and in bad faith, specifically his failure to disclose to the Florida court the prior New York support proceeding. Assuming that such nondisclosure constituted fraud, it is inappropriate for this Court to grant plaintiff's request to set aside the defeasance clause. Plaintiff, by electing not to defend the Florida action, has waived her right to raise in another forum any non-jurisdictional issue in connection with the Florida action which she could have raised in the Florida proceeding, including defendant's possible fraud in obtaining the divorce which was the defeasible event. In effect, plaintiff still attempts to attack the judgment dissolving the marital res since there was no adjudication of any other rights by the Florida court which, in fact, did no more than dissolve the marriage. It is the validity of this divorce and nothing more which determines the continued effect of the antenuptial agreement.

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To hold that plaintiff is entitled to enforcement of the antenuptial agreement because of fraud in the Florida proceeding, although she is barred from attacking the validity of that proceeding, would allow plaintiff to accomplish by indirection that which she is unable to achieve directly.

Furthermore, this is not an appropriate case for application of the doctrine of "divisible divorce." Estin v. Estin, 334 U.S. 541 (1948). Except to dissolve the marriage, Florida did not adjudicate any rights of plaintiff in an action in which she was not personally served and did not appear. Florida has not, nor did it attempt, to determine plaintiff's property rights. A determination of the contractual property rights asserted by plaintiff in this action is governed solely by the terms of the antenuptial agreement, a matter with which the Florida court was not concerned. The Florida decree does not divest plaintiff's property rights; it only determines the Rosenstiels' marital status. Stilwell v. Continental Ill. Nat. B & T of Chicago, 31 Ill. 2d 546, 202 N.E.2d 477 (1964); Kovats v. Hobby, 132 F. Supp. 771 (S.D.N.Y. 1955).

There is no doubt that a provision of an antenuptial agreement divesting a wife of rights in her husband's estate upon divorce or separation is valid and not violative of any

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public policy of the State of New York. Matter of Hart, 31 App. Div. 2d 548, 295 N.Y.S.2d 345 (2d Dep't 1968), appeal dismissed, 24 N.Y.2d 737, 299 N.Y.S.2d 1028 (1969); Benjamin v. Benjamin, 197 Misc. 618, 95 N.Y.S.2d 167 (Sup. Ct. N.Y. Co.), aff'd, 277 App. Div. 752, 97 N.Y.S.2d 196 (1950), aff'd, 302 N.Y. 560, 96 N.E.2d 618 (1951). Moreover, the public policy of New York permits the termination of such rights by an ex parte out-of-state divorce. EPTL 5-1.2(a)(1) (McKinney 1967) expressly denies a survivor any intestate distribution from a former spouse or the right to elect against a former spouse's will if a judgment of divorce "recognized as valid under the laws of this state was in effect when the deceased spouse died." The defeasance clause in the antenuptial agreement has precisely the same effect on plaintiff's contractual rights in defendant's estate as EPTL 5-1.2(a)(1) has on statutory inheritance rights. See, In re Adams' Will, 142 N.Y.S.2d 32 (Sur. Ct. Nassau Co. 1955); In re Dollinger's Will, 143 N.Y.S.2d 155 (Sur. Ct. Westchester Co. 1955).

Plaintiff further contends that the term "divorce . . . by decree of a court of competent jurisdiction" is ambiguous; that, therefore, parole evidence is admissible to explain it; and that given the subject and circumstances of the transaction, any ambiguities should be resolved in her favor. The Court finds no merit to this contention. Even if

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plaintiff did not herself comprehend the exact meaning of these words, she was represented by counsel of her own choosing. Her argument that her counsel did not adequately represent her interests is unsupported by the evidence. Nor is there support for her contention that this attorney was somehow in the employ of defendant because defendant paid for the lawyer's services and later sent him cases of whiskey.

Plaintiff also seeks damages for defendant's allegedly tortious course of continuing conduct toward her commencing with their marital discord in October, 1961, and continuing until the present, relying on a theory of intentional infliction of mental and emotional distress.

With respect to this claim, the Court finds that plaintiff and defendant ended their marital relationship in October, 1961, to the accompaniment of much heat and acrimony. Plaintiff has not carried her burden of proof that defendant threatened "to get rid of" her other than by a matrimonial action and to terminate their marriage in such manner as to leave plaintiff penniless.

There is no credible evidence that defendant deprived plaintiff of any of her rights under the antenuptial agreement or otherwise by threatening her at any time that he

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would use his alleged vast underworld connections to inflict physical harm upon her if she went to Florida to defend the divorce action there.

Defendant has not rendered plaintiff penniless. On the contrary, defendant has made all court-ordered support payments in the amount of \$96,000 per year. Plaintiff's present financial condition is the result of her style of living, including her penchant for obtaining expensive luxury items for which she does not pay. Any decrease in the amount of support payments actually received by plaintiff is the result of deductions on account of unsatisfied judgments.

Nor has plaintiff established that defendant was made aware of any wrongdoing in Mexico by his then-attorney in seeking to invalidate plaintiff's Mexican divorce. There is no credible evidence of continued and continuous harassment in the form of surveillance of plaintiff by agents of defendant. The limited surveillance which took place was for a legitimate investigatory purpose within permissible limits under New York law. General Business Law §71(1) (McKinney 1968); People v. Weiler, 179 N.Y. 46, 71 N.E. 462 (1904). Other alleged acts of harassment, except the institution of various legal proceedings, occurred in 1961 and are barred by the statute of limitations, C.P.L.R. §214(5), since they give rise to several separate and distinct causes of action.

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It is clear that at least since 1964 defendant has not intentionally inflicted emotional distress on plaintiff as such conduct is defined in that tort. There has been no evidence that defendant's conduct since 1964 was purely malicious, without justification, and unrelated to the legitimate enforcement of his legal rights. Restatement, Torts 2d §46. Both parties clearly had the right to engage in legal proceedings. Therefore, the Court concludes that plaintiff has failed to establish that defendant's conduct is such that her tort claim will lie.

Since the doctrine of necessities has no applicability to this action, Brooks v. Peck, 35 Misc.2d 177, 232 N.Y.S.2d 137 (Sup. Ct., App. Term, 1st Dep't 1962), any award of counsel fees is governed by Domestic Relations Law §237 (McKinney 1964). Under this section, only plaintiff's challenge to the validity of the foreign ex parte divorce judgment and her action to enjoin the prosecution of a divorce in a foreign jurisdiction can form the basis for an award of counsel fees. This section makes such an award discretionary. The Court, in the exercise of its discretion, denies plaintiff counsel fees. Plaintiff has a substantial income, \$96,000 per year, from the support payments that defendant makes to her. Moreover, these claims, although they cannot be denominated frivolous, had minimal

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merit. Under these circumstances, the Court considers an award of counsel fees to be unwarranted.

The foregoing constitutes the findings of fact and conclusions of law of the Court for the purposes of Rule 52, Fed. R. Civ. P.

Settle judgment on notice.

Dated: December 17, 1973 . . s/ Robert J. Ward
U. S. D. J.

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NOTES

1 Rule 1.540(b), Florida Rules of Civil Procedure:

Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, decree, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment or decree is void; (5) the judgment or decree has been satisfied, released or discharged or a prior judgment or decree upon which it is based has been reversed or otherwise vacated or it is no longer equitable that the judgment or decree should have prospective application. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, decree, order or proceeding was entered or taken. A motion under this subdivision does not affect the finality of a judgment or decree or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, decree, order or proceeding or to set aside a judgment or decree for fraud upon the court.

Writs of coram nobis, coram vobis, audita querela and bills of review and bills in the nature of a bill of review are abolished and the procedure for obtaining any relief from a judgment or decree shall be by motion as prescribed in these rules or by an independent action.

JUDGMENT APPEALED FROM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

This action came on for trial before the Court without a jury, Honorable Robert J. Ward, District Judge, presiding, and the issues having been tried on May 14, May 15, May 16, May 17, May 21, May 22 and May 23, 1973, and a Decision dated December 17, 1973 having been duly rendered constituting the findings of fact and conclusions of law of the Court for the purposes of Rule 52, Federal Rules of Civil Procedure,

It is ORDERED and ADJUDGED that the action be dismissed on the merits and that defendant, LEWIS S. ROSENSTIEL, recover from the plaintiff, SUSAN L. ROSENSTIEL, his costs of action.

s/ Robert J. Ward
U.S.D.J.

Dated at New York, New York
this 21st day of December, 1973

JUDGMENT ENTERED
DEC 26 1973
s/ Raymond F. Burghardt
Clerk of Court

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

NOTICE is hereby given that Susan L. Rosenstiel, plaintiff above named, appeals to the United States Court of Appeals for the Second Circuit from the final judgment entered on the 26th day of December, 1973.

Dated: New York, New York
January 7, 1974

s/ Maurice Shorenstein
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SERVICE OF 2 COPIES OF THE WITHIN

Joint Appendix
IS HEREBY ADMITTED.

DATED: 7/18/74

Greenbaum, Wolff & Ernst
Attorneys for Appellee

